

EXHIBIT D

UNITED STATES DISTRICT COURT

DISTRICT OF PUERTO RICO

In Re:) Docket No. 3:17-BK-3283 (LTS)
)
) PROMESA Title III
The Financial Oversight and)
Management Board for)
Puerto Rico,) (Jointly Administered)
)
as representative of)
)
The Commonwealth of)
Puerto Rico, *et al.*,) December 11, 2019
)
Debtor,)

In Re:) Docket No. 3:17-BK-3566 (LTS)
)
) PROMESA Title III
The Financial Oversight and)
Management Board for)
Puerto Rico,) (Jointly Administered)
)
as representative of)
)
Employees Retirement System)
of the Government of the)
Commonwealth of Puerto Rico,)
)
Debtor,)

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3 In Re:) Docket No. 3:17-BK-4780 (LTS)
4)
5) PROMESA Title III
6 The Financial Oversight and)
7 Management Board for)
8 Puerto Rico,) (Jointly Administered)
9)
10 as representative of)
11)
12 Puerto Rico Electric)
13 Power Authority,)
14)
15 Debtor,)
16)
17)

18
19 Sciemus Limited, et al.,) Docket No. 3:19-AP-00369 (LTS)
20)
21 Plaintiffs,) in 3:17-BK-4780 (LTS)
22)
23 v.)
24)
25 Financial Oversight and)
Management Board for)
Puerto Rico, et al.,)
Defendants.)

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OMNIBUS HEARING

BEFORE THE HONORABLE U.S. DISTRICT JUDGE LAURA TAYLOR SWAIN

UNITED STATES DISTRICT COURT JUDGE

AND THE HONORABLE U.S. MAGISTRATE JUDGE JUDITH GAIL DEIN

UNITED STATES DISTRICT COURT JUDGE

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APPEARANCES:

For the Mediation Team: Honorable Chief U.S. Bankruptcy Judge
Barbara J. Houser

For The Commonwealth
of Puerto Rico, et al.: Mr. Martin J. Bienenstock, PHV
Ms. Laura Stafford, PHV
Ms. Margaret A. Dale, PHV
Mr. Michael A. Firestein, PHV
Mr. Lary A. Rappaport, PHV

For the U.S. Trustee
Region 21: Ms. Monsita Lecaroz Arribas, AUST

For the Official
Committee of Unsecured
Creditors: Mr. Luc A. Despins, PHV

For the Puerto Rico
Fiscal Agency and
Financial Advisory
Authority: Mr. Peter Friedman, PHV
Mr. Luis C. Marini Biaggi, Esq.

For Financial Guaranty
Insurance Company: Mr. Martin A. Sosland, PHV

For The Financial
Oversight and Management
Board Special Counsel: Ms. Sunni P. Beville, PHV

For Ambac Assurance
Corporation: Ms. Atara Miller, PHV

For MGIC Indemnity
Corporation: Ms. Monique Diaz Mayoral, Esq.

For The Puerto Rico
Funds: Mr. John K. Cunningham, PHV

For the Fee Examiner: Ms. Katherine Stadler, PHV

For the Official
Committee of Retired
Employees of the
Commonwealth of
Puerto Rico: Mr. Landon Raiford, PHV

1 APPEARANCES, Continued:

2 For UBS Financial
3 Services Incorporated
of Puerto Rico: Mr. Paul Lockwood, PHV
4
For ERS Bondholders: Mr. Benjamin Rosenblum, PHV
5
For Assured Guaranty
6 Corporation: Mr. Casey J. Servais, PHV
7
For Cantor-Katz
Collateral Monitor,
8 LLC.: Mr. Douglas Mintz, PHV
Appearing in New York
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For Individual
10 Retirees: Mr. Harold Vicente, Esq.
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Appearing Pro Se: Mr. Peter Hein, Esq.
Appearing in New York
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For National Public
13 Finance Guarantee Corp.: Mr. Robert Berezin, PHV
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For Sciemus Limited,
et al.: Mr. James L. Warren, III, PHV
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24 Proceedings recorded by stenography. Transcript produced by
25 CAT.

I N D E X

WITNESSES:

PAGE

None offered.

EXHIBITS:

None offered.

1 San Juan, Puerto Rico

2 December 11, 2019

3 At or about 9:41 AM

4 * * *

5 THE COURT: Again, buenos dias. Welcome counsel,
6 parties in interest, and members of the public and press here
7 in San Juan, those observing here and in New York and to the
8 telephonic participants. As always, it is good to be back
9 here.

10 I'll start with my usual reminder to everyone that
11 consistent with court and judicial conference policies and the
12 Orders that have been issued, there is to be no use of any
13 electronic devices in the courtroom to communicate with any
14 person, source, or outside repository of information, nor to
15 record any part of the proceedings. Thus, all electronic
16 devices must be turned off unless you are using a particular
17 device to take notes or to refer to notes or documents already
18 loaded on the device. All audible signals, including
19 vibration features, must be turned off.

20 No recording or retransmission of the hearing is
21 permitted by any person, including but not limited to the
22 parties or the press in any location. Anyone who is observed
23 or otherwise found to have been texting, e-mailing or
24 otherwise communicating with a device from a courtroom during
25 the court proceeding will be subject to sanctions, including

1 but not limited to confiscation of the device and denial of
2 future requests to bring devices into the courtroom.

3 Our timing today is from now until noon, and then
4 from 1:00 until 5:00 Atlantic Standard Time, if necessary.
5 We'll begin with the Oversight Board status report.

6 Mr. Bienenstock.

7 MR. BIENENSTOCK: Thank you. Good morning, Judge
8 Swain.

9 THE COURT: Good morning.

10 MR. BIENENSTOCK: Martin Bienenstock of Proskauer
11 Rose, LLP, for the Oversight Board.

12 The first topic of the report was the general status
13 and activities of the Oversight Board. The Board continues to
14 partake in substantive negotiations with individual creditors
15 and creditor groups regarding its proposed Plan of Adjustment.
16 The Oversight Board also continues its efforts to broaden
17 active public employee support for the proposed Plan.

18 In terms of mediation, after the October hearing, the
19 Oversight Board participated in mediation sessions through
20 November 7. As the Court is aware, the mediation team filed
21 its interim report and recommendations on November 27. The
22 Board has filed its statement on December 6 seeking certain
23 provisions. The Oversight Board is anxious to continue the
24 mediation sessions, even as potential litigation may have to
25 commence. The mediation team is scheduled to file an amended

1 report on January 10, 2020.

2 It's important to mention, Your Honor, that while the
3 mediation process has not progressed on a steady schedule, and
4 likely not nearly as quickly as the mediators and creditors
5 and the Board desired and may have expected, huge efforts are
6 being made to keep the Commonwealth and the Board in sync with
7 one another as new issues arise, and that is sometimes a slow
8 process.

9 The parties and professionals have differing views as
10 to whether the Oversight Board and the Court can procure
11 confirmation and implementation of a plan of adjustment the
12 Commonwealth does not support, but no one disagrees that huge
13 legal and financial uncertainty will be eliminated if the
14 Commonwealth and Oversight Board both support the same plan.

15 As creditors raise certain new issues, it is not
16 always possible to attain a joint response by the Commonwealth
17 and Oversight Board quickly. Both the Commonwealth and
18 Oversight Board do hear the creditors and are trying to
19 respond constructively.

20 In terms of ERS, last week the Oversight Board, on
21 behalf of ERS and certain bondholder groups, participated in
22 oral argument in the First Circuit concerning the appeal of
23 the Section 552(a) ruling. On a separate track, the
24 government parties, including ERS and the bondholder groups
25 exchanged discovery requests in connection with the agreed

1 upon Orders regarding resolution of bondholder claims against
2 ERS and against the Commonwealth, including the dispute
3 regarding the scope of the bondholders' lien against ERS
4 assets, as well as whether the issuance of ERS bonds was ultra
5 vires.

6 In addition, ERS is no longer making benefit payments
7 to beneficiaries, as the Court and the public knows, as those
8 functions have been transferred to the Commonwealth through
9 the PayGo measures.

10 The Board has been working with ten municipalities
11 and CRIM in connection with developing and certifying their
12 fiscal plans.

13 In respect of PREPA, the Board continues to monitor
14 and participate in the transformation process. Your Honor
15 will shortly hear from Mr. Friedman, AAFAF's representative,
16 more about the PREPA transformation process. The Board
17 believes serious bids have been received and looks forward to
18 proceeding towards a transaction. The Board is also grateful
19 for the Governor of Puerto Rico for supporting the process
20 thus far.

21 The Board has also held public hearings on the status
22 of the implementation of fiscal plan measures for ease of
23 doing business and for the Department of Education, and will
24 hold another public hearing in the coming week on the
25 Department of Corrections.

1 As the Court may -- well, as the Court surely knows,
2 but I want to emphasize, the fiscal plans can only act towards
3 the Board's mission of restoring fiscal responsibility and
4 market access if the measures in the plans are implemented.
5 And that's why it's been so important for the Board to monitor
6 their implementation, to try to enforce their implementation
7 and to hold public hearings where everyone can hear about
8 implementation of these fiscal plans in different sectors of
9 the economy.

10 Your Honor, the next topic on the status report dealt
11 with the reformulation of the ADR proposal. If it's okay, my
12 colleague, Laura Stafford, when I'm finished, will update the
13 Court about that.

14 THE COURT: Yes.

15 MR. BIENENSTOCK: My colleague, Brian Rosen, wanted
16 to do that, and he is in San Juan to do that, but he is also
17 ill and is probably doing us all a favor by not being in the
18 courtroom this morning.

19 THE COURT: Well, please thank him for all of us and
20 give him our best wishes for a speedy recovery.

21 MR. BIENENSTOCK: I will, Your Honor. Thank you.

22 In terms of PRIDCO, PRIDCO has public bonds in the
23 outstanding amount of approximately 150 million in principal
24 and 15 million in accrued interest. As AAFAF notified the
25 Court in the October hearing, AAFAF entered into a

1 Restructuring Support Agreement with over two-thirds of those
2 bondholders.

3 While the Oversight Board has not been formally asked
4 to approve the RSA as a qualifying modification, the Board's
5 professionals are working with AAFAF's professionals to
6 understand the implementation of the RSA, corresponding
7 economic measures and the proposed fiscal plan for PRIDCO.
8 Should the Oversight Board issue a voluntary agreement
9 certification relating to the PRIDCO RSA, the parties aim to
10 commence a Title VI qualifying modification for PRIDCO during
11 the first quarter of 2020.

12 In terms of relations among the Oversight Board, the
13 Commonwealth and the Federal Government, as always, the
14 relations among the government and its professionals and the
15 Oversight Board and its professionals are collaborative.
16 There is constant constructive communication, even as certain
17 differences exist, such as on Law 29.

18 In terms of the Federal Government, the Oversight
19 Board welcomes the legislation released on December 6, 2019,
20 by the United States Senate Finance Committee that will
21 provide 12 billion dollars in Medicaid funding over the next
22 four years to Puerto Rico. The Board welcomes continued
23 federal support for Puerto Rico on the issue of Medicaid
24 funding.

25 Subject to any questions the Court has, that's the

1 end of my status report, Your Honor.

2 THE COURT: Thank you, Mr. Bienenstock.

3 MR. BIENENSTOCK: Thank you.

4 THE COURT: Good morning, Ms. Stafford.

5 MS. STAFFORD: Good morning, Your Honor. Laura
6 Stafford of Proskauer Rose on behalf of the Oversight Board,
7 and I will attempt to fill Mr. Rosen's shoes this morning.

8 I'd like to start off by giving a very brief update
9 on the claims process to date thus far before moving into the
10 details of our reformulated ACR proposal. As of today,
11 approximately 172,469 claims have been filed asserting 43.6
12 trillion dollars against the five debtors. As a result of
13 objections ordered to date, approximately 9,887 claims have
14 been expunged, resulting in a total amount of expunged claims
15 of approximately 43.1 trillion dollars.

16 Today we have on the Agenda approximately 16,800
17 claims to be heard. Flagged for future deficient objections,
18 we have an additional 77,000 deficient claims that we intend
19 to file objections to over the course of the next several
20 weeks to several months.

21 As a result of the ACR process that the Court
22 conditionally approved at the last Omnibus hearing, we have
23 approximately 21,000 claims that are ready for ACR at this
24 time, and we anticipate that of the 77,000 deficient
25 objections -- or deficient claims that we plan to file on

1 objections, some number of those will likely move into ACR,
2 including several of the claims that were scheduled for
3 hearing today but as to which responses or subsequent mailings
4 have been received.

5 Moving on to the ADR proposal itself, Your Honor.
6 Before the October Omnibus hearing, the debtors shared their
7 most recent draft of the ADR procedures motion with AAFAF and
8 with the Administrative Office of the Courts. The debtors are
9 in the process of incorporating some of the feedback that we
10 have received from each of those parties, and we recently
11 shared with the Administrative Office some additional
12 refinements to that draft for consideration.

13 The Court's provisional approval of the debtor's
14 proposed administrative claims reconciliation procedures, as
15 well as the responses that the debtors have received to the
16 supplemental mailings that were sent to claimants have been
17 very helpful in this regard in helping us to refine the ADR
18 proposals in light of what we've learned about the claims
19 population thus far.

20 As a result of both of those procedures, the debtors
21 have been able to understand better the population of claims
22 that will need to proceed through the ADR process, and the ADR
23 procedures that will be most appropriate to those types of
24 claims.

25 It's now our understanding that the great majority of

1 | claims that will need to go through ADR are litigation-related
2 | claims. As a result of that, we have shared further
3 | refinements to the ADR procedures with the Administrative
4 | Office most recently, as well as with AAFAF and with the UCC.
5 | We look forward to receiving further guidance and feedback
6 | from each of these different parties, and we intend to propose
7 | a revised ADR procedures motion for the Court's consideration
8 | at the January Omnibus hearing.

9 | And that concludes this portion of the status report,
10 | unless Your Honor has any questions.

11 | THE COURT: No. Thank you for that update.

12 | MS. STAFFORD: Thank you.

13 | THE COURT: All right. Just one moment.

14 | And now the AAFAF report.

15 | MR. MARINI BIAGGI: Good morning, Your Honor.

16 | THE COURT: Good morning.

17 | MR. MARINI BIAGGI: Luis Marini of Marini Pietrantoni
18 | Muniz on behalf of AAFAF.

19 | Foremost, Your Honor, I would like to thank you for
20 | the opportunity to address the Court regarding the status of
21 | post Hurricane Irma and Maria infrastructure repairs and
22 | funding. This is a topic that is of high importance to AAFAF,
23 | Governor Wanda Vazquez and the people of Puerto Rico after the
24 | devastation caused by the hurricanes over two years ago.

25 | I will first provide the Court with a general

1 overview of the funding allocated to date to Puerto Rico, the
2 amounts obligated and disbursed and a brief overview of the
3 main funding sources and projects covered. I will then
4 provide some additional detail on the funding granted and
5 projects undertaken by PREPA and HTA.

6 I note, Your Honor, that the data and information
7 provided today has been obtained by AAFAF directly from PREPA,
8 HTA, the Department of Housing, and Central Office of Recovery
9 Reconstruction and Resiliency, also known as COR3, and the
10 Department of Housing.

11 Your Honor, Congress has allocated approximately 48
12 billion to Puerto Rico for recovery efforts. Of these
13 amounts, approximately 21 billion have been obligated and 14.8
14 billion has been disbursed.

15 There are two main categories of funding projects:
16 Those funded and approved for temporary and emergency repair
17 work, and those geared towards permanent projects. To date,
18 the funding approved and disbursed has been geared in the
19 substantial majority to address temporary and emergency repair
20 work. This year there has started to be a transition between
21 temporary work assistance and permanent work assistance.

22 Now, there are four main funding sources. These
23 include FEMA's Public Assistance Program, FEMA's Individual
24 Assistance Program, Hazard Mitigation Assistance and other
25 recovery programs, such as funds through HUD's Community

1 Development Block Grant disaster recovery, or CDBG. I will
2 provide a brief update on each.

3 FEMA's Public Assistance Program provides funding for
4 emergency repairs and for permanent work. To date,
5 approximately six billion have been obligated through public
6 assistance programs, and four billion has been disbursed. The
7 majority of these funds are for temporary and repair work, for
8 PREPA, public buildings, housing and other areas.

9 Specifically, of these funds, approximately 5.1
10 billion has been obligated and 3.75 billion has been disbursed
11 for temporary repair work, and approximately 500 million has
12 been obligated and 40 million disbursed for permanent
13 projects. Of the funds disbursed for permanent projects, most
14 have been for permanent projects of HTA, which I will address
15 soon.

16 FEMA also provides individual assistance, financial
17 help and direct services to individuals and households. To
18 date, approximately 2.6 billion has been approved and 2.48
19 billion has been disbursed through these programs to
20 individuals and households.

21 Funding is also obtained through the Hazard
22 Mitigation Assistance program, which is geared to communities
23 and implementation of mitigation planning and projects aimed
24 at reducing losses from future disasters. It is estimated
25 that the Commonwealth may receive up to three billion dollars

1 through these funds.

2 Finally, among other funding sources, the HUD CDBG
3 provides funds geared, among other purposes, to rebuild
4 communities, address damaged housing, business and
5 infrastructure. To date, approximately 20 billion has been
6 allocated to Puerto Rico. Of these amounts, 1.5 billion has
7 been obligated and less than 400,000 has been disbursed.

8 As to HTA, it has assessed an estimated funding
9 needed for emergency repairs in the amount of 150 million and
10 686 million for permanent repairs. In sum, HTA has estimated
11 repair costs of approximately 836 million. These funds are
12 destined for repairing roadways, bridges, signage and safety
13 issues, traffic signals, lighting, among others.

14 Now, HTA has received approximately 480 million from
15 the Federal Highway Administration's ER allocations and has
16 disbursed to contractors or transferred to the Eastern Federal
17 Lands Highway Division for the construction of permanent
18 repairs approximately 77 percent of this amount.

19 As to the emergency construction repairs to date, HTA
20 has completed a substantial majority of this. Emergency
21 repairs relating to safety devices, modular bridge
22 installations, bridge repairs and traffic signals are
23 substantially and over 90 percent complete.

24 As to permanent construction, HTA has made progress
25 and completed approximately 75 percent of the permitting and

1 design of landslide permanent repairs, and 90 percent of the
2 permitting and design of signage and safety permanent repairs.
3 Eastern Federal Lands Highway Division is in the process of
4 procuring the construction projects for these permanent
5 repairs and has been assigned approximately 240 million for
6 the management and construction of the permanent repairs. The
7 Federal Highway Administration is yet to assign approximately
8 355 million for the completion of these projects.

9 With regards to PREPA, as of the end of November, out
10 of the funding allocated to conduct emergency repairs,
11 approximately 2.1 billion dollars has been incurred by
12 contractors and PREPA, of which approximately 355 million has
13 not yet been disbursed by PREPA. At a high level, these funds
14 were used to address the system collapse caused by the
15 hurricanes, through repairs to the whole transmission and
16 distribution system over a 12-month period in order to restore
17 power to customers. These emergency and temporary repairs are
18 substantially complete.

19 With regard to restoration and permanent work and
20 efforts to improve the system for future events, PREPA has
21 performed and continues to perform analysis and submit
22 participation packages to FEMA for the formulation of project
23 worksheets. These information packages have generally been
24 prepared on an asset or asset classification basis.

25 A total of 12 permanent project packages have already

1 | been submitted to FEMA. The submissions occurred between
2 | April 2019 and September 2019, and include projects to address
3 | the generation and transmission for Vieques and Culebra,
4 | transmission lines, the assets in the Humacao Region, the
5 | eastern pharmaceutical manufacturing corridor, the
6 | north-to-south transmission backbone, street lights, 17 of the
7 | most damaged substations, buildings island wide, the Watauga
8 | Dam and power transmission lines island wide. Although PREPA
9 | estimates the cost of these projects to be more than 4.2
10 | billion, and includes various sources of funding that PREPA
11 | believes it is eligible to receive, review and validation of
12 | eligibility of FEMA is required.

13 | A total of ten permanent project packages are also
14 | planned to be submitted to FEMA between now and the end of
15 | March 2020. This includes projects focusing on the
16 | transmission lines island wide, vehicles, the remaining
17 | substations, distribution feeders island wide, all dams, power
18 | plants, irrigation channels and hydro plants, among other
19 | projects. As of last week, of the requested amounts, only 111
20 | million has been obligated by FEMA for costs associated with
21 | the architecture and engineering, design and construction
22 | plans for these projects.

23 | With regards to CDBG, Congress has specifically
24 | appropriated two billion dollars through CDBG for improved
25 | electrical power systems in areas impacted by the hurricane,

1 to be shared between Puerto Rico and the U.S. Virgin Islands.
2 Although these funds have been appropriated by Congress, at
3 this time no funds have been obligated or disbursed.

4 Before finishing this report, Your Honor, I would
5 also like to inform the Court that on December 7, 2019, the
6 Governor issued an executive order expanding AAFAF's reach in
7 implementing public policy on post hurricane recovery and
8 reconstruction efforts, with a focus on areas of critical
9 infrastructure, including energy, ports, water, education,
10 housing and health.

11 AAFAF, COR3, FEMA and others are working in
12 conjunction with the Government of Puerto Rico to seek ways to
13 optimize and improve the flow of funds and the legal
14 compliance required. PREPA, COR3, FEMA and now AAFAF
15 generally have weekly meetings attended by representatives of
16 these entities to focus on permanent project formulation,
17 funding, and to provide status of the different matters being
18 handled.

19 Your Honor, unless Your Honor has any questions, I
20 will turn it over to my colleague, Mr. Friedman.

21 THE COURT: Thank you very much, Mr. Marini.

22 MR. MARINI BIAGGI: Thank you.

23 MR. FRIEDMAN: Good morning, Your Honor. Peter
24 Friedman of O'Melveny & Myers, just to provide a few other
25 updates on AAFAF activity and governmental activity.

1 The first thing I wanted to mention is to dispel
2 something that we saw actually in one of Mr. Hein's pleadings
3 and you sometimes see floating around the internet, which is
4 the idea that the government is not earning interest on its
5 treasury single account balances. As AAFAF announced last
6 week, interest on Treasury single account balances is expected
7 to increase by 39 percent in fiscal year 2020 due to banking
8 moves the Treasury and AAFAF have undertaken. This has
9 resulted so far in an accrual of nearly 49 million dollars
10 since the beginning of the year and is expected to lead to an
11 increase in balances by approximately 125 million dollars for
12 the entirety of the fiscal year.

13 The second thing I wanted to mention is an activity
14 press release that was just announced yesterday with respect
15 to the government's launching of the next phase of Act 106
16 implementation with regard to defined contribution plans for
17 public employees. And in that regard, there will be a
18 launching of a new website, Plan106Info.com, and a toll free
19 number of 1-844-752-6106, starting on December 19th, next
20 week, which will allow public employees to decide how they
21 wish to invest their money and learn about financial matters
22 related to their Act 106 accounts.

23 The third thing I wanted to mention, as
24 Mr. Bienenstock referred to, is PREPA. The government is
25 pleased to report that there are two significant milestones in

1 the effort to transform Puerto Rico's electric sector. The
2 first is that bids have been received in the P3 process for
3 the operation and management of PREPA'S transmission and
4 distribution system.

5 The P3 authorities are working with proponents to
6 understand and analyze the bids and negotiate final terms.
7 The government and the Oversight Board have been working
8 together to move this process forward and look forward to
9 making the final selection of a proponent early next year.

10 Second, P3 commenced a process to solicit market
11 feedback in connection with a potential transaction or
12 transactions for the actual generation assets. The market
13 sounding is a first step in a process towards a potential
14 generating transaction, which would further the work to
15 transform and improve the reliability of the electric sector.

16 The transformation of the electric sector is a top
17 priority to achieve economic growth in Puerto Rico. PREPA'S
18 exit from Title III is another vital step in this process.
19 AAFAF and other governmental agencies are working through the
20 Puerto Rico legislative process for enabling legislation to
21 support PREPA's exit from Title III and the transactions in
22 the RSA. That legislative process may have some impact on the
23 timing of the 9019 motion with respect to the RSA, and if it
24 does, we will certainly let the Court know.

25 The last thing we wanted to say, Your Honor, is I was

1 hoping to take a moment to recognize the retirement of my
2 friend, Mohammad Yassin, who is in the courtroom today.
3 Mr. Yassin will be retiring from AAFAF and COFINA at the end
4 of the year. He is the fiscal agent at AAFAF. I don't think
5 anybody knows what that actually means, but -- in terms of the
6 title, but in practical terms, Mr. Yassin has been, for the
7 last three years, the person who has gotten everything done.
8 You don't know his words, I don't think he's spoken in court,
9 but I think you know the fruit of his labors.

10 I think, to put it succinctly, he has worked to
11 ensure that Puerto Rico's restructuring has not happened to
12 Puerto Rico but with Puerto Rico. He has earned the respect
13 of the Board, the mediation team and its adversaries, and has
14 always fought to make sure AAFAF has a place at the table. He
15 was a forceful advocate for the governance structure at
16 COFINA, for provisions of the bonds, which now trade above
17 par. He was instrumental in designing PayGo and strengthening
18 Puerto Rico's retirement program.

19 He's been an architect of enhanced reporting on bank
20 accounts and other financial information, and he's even
21 managed to break a nasty Diet Coke habit over the past three
22 years. He will be ably replace by other people at AAFAF.
23 AAFAF has terrific people. But I wanted to extend our client,
24 my firm's and my personal thanks for the hard work and
25 friendship of Mr. Yassin. He will be missed.

1 THE COURT: Thank you, Mr. Friedman.

2 And thank you, Mr. Yassin.

3 Is there anything else by way of status reports or
4 comments thereon?

5 (No response.)

6 THE COURT: So the next item on the Agenda is II, the
7 fee application of the Fee Examiner and Godfrey & Kahn. And I
8 understand someone is to speak on that by phone? No?

9 Oh, I'm sorry. Ms. Stadler is here.

10 MS. STADLER: Good morning, Your Honor.

11 THE COURT: Good morning, Ms. Stadler.

12 MS. STADLER: Katherine Stadler of Godfrey & Kahn on
13 behalf of the Fee Examiner, Brady Williamson, who is on the
14 phone.

15 We noted the Court's entry of the Orders for Sixth
16 Interim Fee Applications based on our recent supplemental
17 report and appreciate that having been resolved prior to this
18 hearing.

19 We filed our Fourth Interim Fee Application, which
20 covers the six months from May -- I'm sorry, April through
21 September of this year on a 21-day notice. And as far as I am
22 aware, there have been no objections received. If the Court
23 has questions about our application, I'm happy to answer them.
24 Otherwise, we would ask that the Order allowing the
25 application be entered.

1 THE COURT: I am not aware of any objections that
2 have been filed either. And I have reviewed the application
3 and find it sufficiently informative. And I thank the Fee
4 Examiner and your firm for the work that you continue to do
5 here, which is essential to my ability to stay on top of the
6 volume of service providers and applications as we proceed
7 through this case.

8 And so I thank you, and I grant the application and
9 will enter an appropriate order.

10 MS. STADLER: Thank you, Your Honor.

11 THE COURT: Thank you.

12 The next Agenda item is uncontested matters. And so,
13 Ms. Stafford.

14 MS. STAFFORD: Good morning again, Your Honor.

15 I'm happy to take the uncontested claim objections
16 however you'd like. The 76th relates to a certain type of HTA
17 bonds as to which no objections were received.

18 With respect to the remaining uncontested claim
19 objections, each of these are deficient objections as to which
20 we received a number of supplemental mailings after the filing
21 of those deficient objections. We adjourned a number of the
22 claims by a notice that was filed last Friday. Between last
23 Friday and today, we received a handful of additional
24 supplemental mailings. And so we'd like to adjourn a handful
25 of additional claims regarding these deficient objections to

1 the January Omnibus hearing so we'll have time to look at the
2 supplemental mailings that came in.

3 THE COURT: And so in terms of logistics here, are
4 you planning to file revised proposed orders with revised --
5 I'm sorry, revised Exhibits A, listing the particular
6 uncontested claim objections that you are not adjourning, and
7 requesting that the Court approve those?

8 MS. STAFFORD: That is correct, Your Honor. And
9 we'll also file Notices of Adjournment and serve them on the
10 affected claimants who sent us supplemental mailings as of
11 today so that they're aware their objection has been adjourned
12 until January.

13 THE COURT: All right. So as to the claims objected
14 to in the following Omnibus Objections, as to which there has
15 been neither a response nor an adjournment request by the
16 Oversight Board, the objections are sustained, disallowing the
17 Proofs of Claim to be enumerated in revised Exhibits A to
18 appropriate orders.

19 These Omnibus Objections are as follows: The 76th
20 Omnibus Objection, which is docket entry 8961 in 3283. That's
21 Agenda Item III.1. Then Agenda Item III.2 is the 78th Omnibus
22 Objection, which is docket entry 8964. Agenda Item III.3 is
23 the 82nd Omnibus Objection, which is docket entry 8969.
24 Agenda Item III.4 is the 84th Omnibus Objection, which is
25 docket entry 8971. Agenda Item III.5 is the 85th Omnibus

1 | Objection, which is docket entry 8973. Agenda Item III.6,
2 | which is the 86th Omnibus Objection, which is docket entry
3 | 8975. Agenda Item III.7, which is the 87th Omnibus Objection,
4 | which is docket entry 8976. Agenda Item III.8, which is the
5 | 88th Omnibus Objection, and that is docket entry number 8977.
6 | Agenda Item III.9, which is the 90th Omnibus Objection, which
7 | is docket entry 8979. Agenda Item III.10, the 91st Omnibus
8 | Objection, which is docket entry 8980. Agenda Item III.11,
9 | which is docket entry 8981, the 92nd Omnibus Objection.
10 | Agenda Item III.12, which is the 93rd Omnibus Objection at
11 | docket entry 8982. Agenda Item 13, which is the 95th Omnibus
12 | Objection, which is docket entry 8984.

13 | Now, actually as to that one, I did have an issue.
14 | All of the other declarations in support of the Omnibus
15 | Objections recited that letters requesting additional
16 | information had first been sent to the appropriate claimants.
17 | We do not see that representation in the declaration in
18 | support of the 95th Omnibus Objection, and so I would ask
19 | that, with the revised order, you file a supplemental
20 | declaration making clear that that first step was taken before
21 | the claim objection was served.

22 | MS. STAFFORD: We will certainly do that, Your Honor.

23 | THE COURT: Thank you.

24 | So that takes care of Agenda Items III.1 through 13.

25 | MS. STAFFORD: Thank you, Your Honor.

1 THE COURT: Thank you.

2 And then Agenda Item III.14 is PREPA's Motion for
3 Undisputed Payment and Release of Insurance Proceeds.

4 Good morning.

5 MS. DALE: Good morning, Judge. Margaret Dale from
6 Proskauer for the Oversight Board.

7 THE COURT: Good morning, Ms. Dale.

8 MS. DALE: Good morning.

9 THE COURT: Give me just one --

10 MS. DALE: PREPA is requesting authority via order to
11 accept a 1.726 million dollar payment for a loss that had been
12 suffered. PREPA'S asking to be able to use that money at its
13 discretion and for no claims to be made against that money by
14 creditors.

15 The insurance counsel is here. Counsel for the
16 insurers is here today if the Court would have any questions.

17 I notice a presentment was filed with a revised form
18 of order. No objections have been received. And we'd ask the
19 Court to enter that Order subject to any questions that the
20 Court has.

21 THE COURT: The Court does have questions, but I'll
22 direct them to you at this point. The Proposed Order, the
23 Notice of Presentment was filed in the adversary proceeding,
24 and we also had you file it on the 3283 docket. The Proposed
25 Order seeks language that binds not only the parties to the

1 | adversary, but indeed the whole world of potential existing
2 | creditors and third parties, as to any dispute as to the
3 | application of these funds.

4 | I can understand why you would want that. I can
5 | understand why the insurance company would want that form of
6 | peace. But I don't understand how due process would let me do
7 | that. And so to bottom line it, I'm willing to sign an order
8 | that says "payment of this undisputed payment will satisfy the
9 | insurer's obligations under the property insurance with
10 | respect to the amounts so paid," but the remaining language in
11 | paragraph four of the Proposed Order and the language in
12 | paragraph three, which, for example, says "no creditor of
13 | PREPA or any other party shall interfere with the transfer of
14 | the payment or PREPA'S use of the undisputed payment at its
15 | discretion," I just don't see how that's a justiciable request
16 | under the circumstances.

17 | MS. DALE: Your Honor, if it's all right with you, if
18 | I could speak with the insurance counsel's -- lawyer, and then
19 | we could address that proposed reformation of the order with
20 | you or with your law clerk in a few minutes?

21 | THE COURT: That's fine. So we'll put you for
22 | another return to the podium, and you'll let us know when
23 | you're ready for that.

24 | MS. DALE: Thank you very much, Your Honor.

25 | THE COURT: Thank you. Apologies for the delay.

1 So the next item on the Agenda is the interim report
2 and recommendation of the mediation team, and the filings in
3 response to that interim report. And I have received a very
4 helpful list of the parties' agreed allocations of time to
5 address that.

6 I would first invite Judge Houser, our mediation team
7 leader, to take the podium with any remarks she may wish to
8 make before we hear from the respondents. And I thank you for
9 your work, Judge Houser.

10 HONORABLE CHIEF UNITED STATES BANKRUPTCY COURT

11 JUDGE HOUSER: Good morning, Judge Swain. Of course you're
12 welcome.

13 First, a point of personal privilege, and that is to
14 acknowledge that the work of Mr. Yassin has truly been
15 outstanding. He knows that he will be greatly missed. And
16 while there will be successors that will take over his
17 responsibilities, let me simply say they have big shoes to
18 fill, literally and figuratively. And we wish Mohammad all
19 the best. And some of us might actually be jealous that he is
20 escaping these proceedings.

21 Let me now turn, if I may, to the interim report.
22 And I would be remiss if I didn't start by thanking the
23 parties for their active and sometimes vigorous participation
24 with the mediation team in discussing both substantive issues
25 in these cases and the job of trying to manage the competing

1 | views of scheduling of the issues that are critical to be
2 | resolved ultimately if we are unable to be successful in
3 | mediation of those issues.

4 | The parties met with the mediation team, shared
5 | views, were constructive in trying to find solutions. And I'm
6 | pleased to say that, for the most part, the scheduling orders
7 | are not being objected to. Now, that may be because I asked
8 | the parties to be thoughtful in their responses and to
9 | consider whether or not the scheduling issues, as finally
10 | presented in the proposed orders, whether or not they were
11 | good enough.

12 | I do think it is fair to say that there is a delicate
13 | balance that has to be drawn in trying to resolve the parties'
14 | disparate views, both on the merits of the issues, but equally
15 | importantly, on the timing of these schedules. We had
16 | significant disagreements among the parties at the outset, and
17 | by working with them and having very constructive
18 | conversations with them, we largely came to schedules that
19 | most people find I think good enough. Perhaps not their first
20 | choice, but nevertheless, I think we are satisfied with the
21 | schedules we have put forth.

22 | The responses have been carefully reviewed by the
23 | members of the mediation team, and from my perspective, I
24 | suppose -- and I'd like to put Mr. Hein's response off to the
25 | side for a moment. I'll come back to it. The responses were,

1 I guess, fortunately not surprising to the members of the
2 mediation team. That reflects the fact that we did have
3 extensive conversations with parties about all of these
4 issues.

5 And from my perspective, you can put the responses
6 and the issues raised into two broad categories: The first
7 are issues that, yes, are scheduling issues, but they have
8 substantial overlap with substantive issues. And I feel that
9 while I am a judge, I am not the judge in these cases. I am
10 leading the mediation team. And the judge in these cases,
11 you, need to resolve issues that impact meaningfully on both
12 substance and schedule.

13 And so what we tried to do in the interim report is
14 simply identify areas where there was vigorous dispute between
15 the parties that was both substantive and scheduling, identify
16 that, and then simply leave a blank in the Proposed Order for
17 you to resolve the dispute.

18 The alternative, second category are issues that were
19 discussed with members of the mediation team, and our judgment
20 and the parties' judgment simply differ as to what is a
21 reasonable compromise with respect to an issue. Again, we put
22 our recommendation in the proposed interim Orders, and
23 ultimately it will be your decision as to what judgment is
24 appropriate with respect to those issues.

25 To give you an example of each of those categories,

1 | because it may be helpful, with respect to the first category,
2 | it's a scheduling issue, but it also has substantial
3 | substantive issues as well. I'll point to the PRIFA Lift Stay
4 | Motion. There is disagreement between the Oversight Board on
5 | the one hand and Ambac on the other hand with respect to the
6 | timing of that and whether it should be the original motion
7 | that is fully briefed that is heard, or whether Ambac will
8 | file an amended motion and you'll proceed on a different
9 | motion than the motion currently on file.

10 | Yes, that's a scheduling issue, but it also has
11 | significant substance attached to it. And, therefore, in the
12 | Proposed Interim Order, we simply leave a blank for the date
13 | of the hearing on the lift stay motion. And you will need to
14 | decide the parties' disagreement on timing and scope, if you
15 | will, of that lift stay hearing.

16 | And again, we did not want to tilt the playing field.
17 | We felt that was not appropriate, to take one party's side
18 | over another party's side with respect to that issue. So we
19 | did the only thing I thought a prudent mediation team could
20 | do, which is serve that ball up for you to decide on the
21 | merits. And obviously I believe the parties will live with
22 | whatever your decision is.

23 | With respect to the second category of issues, I will
24 | point to the question of consolidated briefing. And the
25 | Oversight Board, in its response, has suggested that

1 consolidated briefing by defendants should be mandated. I've
2 been working with these parties for the last two and a half
3 years. The thought that they could come to an agreement
4 within the time frames that we set forth for briefing in our
5 proposed orders and be compelled to file a consolidated brief
6 seemed unrealistic to me after the last two and a half years
7 of dealing with all of the parties.

8 That's not a criticism. It's just an acknowledgment
9 that we have very good lawyers. They all feel very strongly.
10 And so we agree with the concept that minimizing the number of
11 briefs, and ideally the length of briefs is important, because
12 you are but one judge, and you have but one set of clerks
13 devoted to these Puerto Rico cases. Mandating consolidated
14 briefing seemed, in our judgment, to be more than we should
15 go. So what the proposed interim orders say instead is that
16 parties are encouraged to consult with each other and to try
17 to file coordinated briefing and, if possible, consolidated
18 briefing; but there is no mandatory requirement.

19 With respect to what we call secondary parties, we
20 have suggested that there be a requirement that they certify
21 that they've reviewed the primary party's briefs, and that
22 their briefs address issues not already addressed. Again, the
23 goal of that recommendation is simply that we'd like to
24 minimize the number of briefs that the Court has to read, and
25 we suggest that you narrow the issues to issues that have not

1 | been raised.

2 | And the certification requirement is not to be
3 | difficult, but simply to put the onus on the party to take the
4 | time to read a primary party's brief and then focus on issues
5 | that have not yet been raised.

6 | THE COURT: And do I correctly recall that your
7 | proposed schedule provides a period of two weeks for that
8 | review and formulation of any additional narrower submissions?

9 | HONORABLE UNITED STATES DISTRICT COURT JUDGE HOUSER:
10 | Indeed it does.

11 | THE COURT: So it's not a matter of having to do it
12 | overnight?

13 | HONORABLE UNITED STATES DISTRICT COURT JUDGE HOUSER:
14 | Correct.

15 | And equally importantly, there is an escape valve, as
16 | at least in my view there should be, that the Court can always
17 | order otherwise. So if there is a unique situation that we
18 | can't anticipate now where some party feels the need for more
19 | than the seven pages we've recommended, the Court can always
20 | grant an extension of that briefing limit in the Court's
21 | discretion.

22 | I'd like to now take Mr. Hein's Response and mention
23 | just a couple of things. First, he has concerns about the
24 | delay of a notice going out, and certainly has concerns about
25 | failing to serve the interim report. I'll take responsibility

1 for those decisions because they rest with me.

2 Because we asked the Court for permission to go with
3 an interim report followed by a final report, it seemed to me
4 that the interim report did not need to be served out on all
5 parties, because certainly the amended report proposed to be
6 filed on January 10th is something that could be fully served
7 so that everyone can see it. And obviously the interim report
8 is filed on the docket, and everyone has access to it at this
9 time there, although certainly it has not been served out.

10 So if the Court feels that service is appropriate, my
11 suggestion is --

12 THE COURT: And I do.

13 HONORABLE UNITED STATES DISTRICT COURT JUDGE HOUSER:
14 -- that that happen with the amended report, not this interim
15 report.

16 Secondly, the timing of notice. Mr. Hein would like
17 to see some changes to the proposed form of notice, which I'm
18 sure he will raise with you. Those are easy changes, if the
19 Court believes changes to the notice are appropriate. And
20 certainly adding the Wall Street Journal as a party to publish
21 notice is also an easy change to that, if the Court believes
22 that is appropriate.

23 The question of timing, though, I believe is slightly
24 more complicated. And from my perspective, we have
25 recommended that the notice not be mailed until after the

1 first of the year for primarily two reasons. Number one, the
2 claim objections have been pending for some time and notice
3 has not gone out yet with respect to certain of those. To
4 send the notice out right before Christmas seems slightly
5 unseemly to me. And that is why in our proposed version of
6 the interim orders, waiting until after the first of the year,
7 which is not a substantial delay, nor will it delay -- there
8 is adequate time in the schedule for the notice to go out and
9 for parties to have the opportunity to participate, even if
10 there is a delay until after the new year.

11 The second issue deals with the logistics that
12 perhaps --

13 THE COURT: May we just go back for one moment --

14 HONORABLE CHIEF UNITED STATES BANKRUPTCY COURT
15 JUDGE HOUSER: Please.

16 THE COURT: -- to the publication issue? Because I
17 wanted to float with you, and heads up for everyone else, an
18 idea that has occurred to me with respect to accessibility of
19 publication notices. As everyone knows, no matter how many
20 publications something is published in, it typically happens
21 once or maybe twice, and so it's somewhat of a hit-or-miss
22 proposition as to whether readers of any given publication see
23 it.

24 It seems to me that it could be helpful here for
25 broader notice purposes for the -- well, the Oversight Board

1 is my most likely candidate for this, to create a page on its
2 website that would contain each notice relating to these cases
3 that is published in newspapers, so that it could be labeled
4 "litigation notices published," or something like that.

5 And if we manage to publicize that over time,
6 including perhaps in this notice that goes out regarding the
7 GO and PBA objections, or the amended report, to say that on
8 an ongoing basis bondholders and other interested members of
9 the public who wish to see whether there are published notices
10 can go to the website, that that would be very helpful to
11 preserving the availability, the easy availability of a
12 catalog of information.

13 Does that make sense to you, as you've thought about
14 notice in these cases?

15 HONORABLE CHIEF UNITED STATES BANKRUPTCY COURT
16 JUDGE HOUSER: It does. I think that is potentially a good
17 idea. It's also possible that the Oversight Board is not a
18 party to all of the objections, the Official Committee of
19 Unsecured Creditors is. So I think either party could host on
20 the website that notice area.

21 THE COURT: I thought about the Oversight Board since
22 it is the debtors' representative and the manager of all of
23 these cases, and there are many different adversaries and
24 situations in which notices may be published in this broad
25 galaxy of litigation. And so the Oversight Board's website

1 | seemed to me to be the appropriate central place for that sort
2 | of thing.

3 | HONORABLE CHIEF UNITED STATES BANKRUPTCY COURT

4 | JUDGE HOUSER: And certainly I think that's a good idea. I'll
5 | look to Mr. Bienenstock to address it with the Court in his
6 | response time, but I do think that's an added way to try to
7 | ensure that people have access to the information that they
8 | need.

9 | So in addition to trying not to ruin individual
10 | bondholders' holidays, when months and months have passed and
11 | they have not yet been advised that their claims have been
12 | objected to, it also seemed to me that from a court staff
13 | perspective, which I'm including the Clerk's Office staff here
14 | in the District of Puerto Rico --

15 | THE COURT: And they are grateful.

16 | HONORABLE CHIEF UNITED STATES BANKRUPTCY COURT

17 | JUDGE HOUSER: -- we will have a large number, I assume, of
18 | individual bondholders who will get these notices. They don't
19 | have counsel and they don't fully appreciate what's happened.
20 | And we can work hard to make the notice as plain English as
21 | possible or plain Spanish as possible. These are complicated
22 | issues that cannot easily be captured in a notice.

23 | And so what happens, as we judges know, when
24 | individual pro se parties don't understand something that they
25 | get from the Court, they call the Clerk's Office and ask for

1 | some guidance. And the holiday season is a time when often
2 | clerks' offices are not staffed as fully as they might be with
3 | people taking leave and other things. And so it was my view
4 | that waiting until after the first of the year, when the
5 | Clerk's Office staff was more robust and we were past the
6 | holiday season, was an appropriate time for the notice to go
7 | out, recognizing that there will likely be a lot of phone
8 | calls in to the Clerk's Office asking questions about what
9 | parties need to do or not do in response to the notice.

10 | If I may, unless the Court has questions for me now,
11 | I'll reserve just a few minutes if there's anything I feel
12 | compelled to stand up and say following the responses that you
13 | hear from the other parties.

14 | THE COURT: Yes.

15 | HONORABLE CHIEF UNITED STATES BANKRUPTCY COURT
16 | JUDGE HOUSER: Thank you.

17 | THE COURT: Thank you.

18 | And so now we'll turn to the Oversight Board's
19 | representative, and 14 minutes have been requested and
20 | allocated.

21 | MR. FIRESTEIN: Good morning, Your Honor. If I could
22 | reserve two minutes for rebuttal?

23 | THE COURT: Yes.

24 | MR. FIRESTEIN: Michael Firestein, not
25 | Mr. Bienenstock, on behalf of the Oversight Board.

1 There's obviously a lot to discuss. I hope to be
2 able to accomplish this in the 12 minutes that I have.
3 Included as part of these remarks, I will address in due
4 course a few of the observations that Judge Houser has made.

5 Obviously the Court has had an opportunity to
6 consider a number of the submissions regarding the interim
7 report from the mediation team, and everyone has taken steps
8 to thank the mediation team and all of the parties for their
9 efforts in connection with this process. And while I don't
10 want to repeat what's in our papers, and our submissions
11 expressly detail the suggested revisions that we have, there
12 are a few items that I'd like to highlight because I believe
13 they're important and they are necessary to revise at this
14 time.

15 In addition to those observations, to the extent that
16 others have made some contrary views, as distinguished from a
17 conventional briefing opportunity related to a motion, no one
18 has had an opportunity yet to respond to the proposals of the
19 other side, and there are a few observations that we'd like to
20 make.

21 Footnote to that, to the extent the Court has any
22 questions or observations concerning the ERS addendum that was
23 stuck at the back of our interim report, I would yield to my
24 partner, Margaret Dale, who would address that. I only note
25 for the Court's interest that it was consented to and no one

1 had any objection to it to the best of our knowledge.

2 THE COURT: I'm sorry. You're saying who's consented
3 to the ERS --

4 MR. FIRESTEIN: I believe that all the bondholders,
5 and there was a footnote that we had consulted with all of the
6 bondholders relative to the suggested changes that would be
7 made relative to ERS, and that there were no objections to
8 that.

9 THE COURT: Perhaps I missed that, but what I had in
10 mind -- I guess before you get into the depth of your remarks
11 --

12 MR. FIRESTEIN: Of course.

13 THE COURT: -- I think I should say two things.
14 First, as to ERS, it hadn't been clear to me whether any
15 disagreements or gaps had been bridged or fully processed, and
16 so my plan had been to instruct the relevant parties to meet
17 and confer and file a joint status report on Monday as to
18 whether everybody was on board.

19 If you're telling me everybody's on board now, then
20 perhaps that's not necessary.

21 MR. FIRESTEIN: In fairness to the Court, I did not
22 participate in the conversations, but Ms. Dale did. And I'm
23 happy to step aside for a moment and she can clarify that
24 single point.

25 THE COURT: That's fine. We can do that at the

1 end.

2 MR. FIRESTEIN: Fine.

3 THE COURT: Ms. Dale can let us know that.

4 And then more broadly, as I've reviewed the responses
5 and thought about what we can and should accomplish today, my
6 focus is on matters that would affect events between now and
7 the January Omni, and it seems to me that there are a number
8 of issues that would be much better considered and processed
9 in connection with reactions to the amended report of the
10 mediation team and additional submissions in advance of the
11 January Omni.

12 And so I would be grateful if you and everyone else
13 who speaks today would focus on things that you believe really
14 matter between now and the next time you have an opportunity
15 to speak to these issues.

16 MR. FIRESTEIN: Indeed, Your Honor. That is exactly
17 my point, because some of the -- my overarching observation
18 was in fact the notion that an amended report is intended to
19 be filed, and there are a number of deadlines that are coming
20 up and will need to be addressed, and ships will be launched
21 in the interim, that -- I think it would be helpful to have
22 the Court's guidance with respect to exactly the process that
23 is going to be undertaken. And there are about four or five
24 subjects that relate to that, one of which Judge Houser
25 alluded to at the outset in one of her early examples, that

1 being the PRIFA Lift Stay Motion.

2 To be candid about this, of course always candid with
3 the Court, we've laid out our position time and again relative
4 to this issue. The Court's June 13th Order set the issues of
5 standing and secured status as threshold gating issues. We
6 noted this in our Response.

7 Frankly, whether there is an amendment or there isn't
8 an amendment to the motion, those issues are going to remain.
9 Whether they have standing in order to pursue the claim, and
10 whether -- what the nature and extent, if it exists, that the
11 lien actually is. And our proposal is that those issues, much
12 like they were prepared to be addressed by the Court some
13 months ago before they were remitted into the stay protocol is
14 that those matters be decided.

15 Nothing has changed in the interim, and the Oversight
16 Board's position is that those matters need to be addressed.
17 And it doesn't matter what set of papers are going to be filed
18 relative to things that might go beyond those particular
19 issues. They are primed and ready and ripe for determination.
20 And our hope is that it will be determined as expeditiously as
21 possible for the very reason the Court has articulated.

22 If the Court has a question, I'm happy to take one.

23 THE COURT: I wanted to preview my inclination on
24 this, and this is also previewing for Ambac and anyone else
25 who had wanted to speak to PRIFA. My inclination is not to

1 accelerate the oral argument on the papers as fully briefed so
2 that it occurs prior to the 16th, which is your complaint
3 filing deadline.

4 I realize there's some inefficiency potentially in
5 that, but that's part of our world here. But instead, to
6 permit Ambac to make a motion for leave to amend its lift stay
7 on the same timetable as the mediation team's structure would
8 have additional lift stay motions filed.

9 The Motion for Leave to Amend would be considered
10 under Rule 15 standards in connection with the January Omni,
11 and I believe that the Oversight Board's suggestion of a
12 required meet and confer on timing and bifurcation immediately
13 after the filing of the new lift stay motions, and that would
14 include this Motion to Amend Ambac's Lift Stay, is a salutary
15 one so that I can get, in advance of the January Omni, a
16 better idea as to whether the proposed amendment would be a
17 game changer as to the propriety of the bifurcation that I
18 have established and whether the -- what the sense of the
19 group is, you know, frankly, on preliminary hearing or
20 consolidation and coordination of the lift stay litigation
21 with the Rule 12 litigation.

22 MR. FIRESTEIN: Let me address if I could, Your
23 Honor, an aspect of the inefficiency that I think Your Honor
24 has pointed out. What I don't understand is are you expecting
25 that the Motion for Leave to Amend, while filed on the 16th,

1 would be fully briefed and then heard at the time of the
2 January 29th Omnibus?

3 THE COURT: That is one scenario. Another scenario
4 could be that the Response to the Motion for Leave to Amend
5 would happen on the lift stay briefing timetable. I think my
6 preference would be to have the Motion for Leave to Amend
7 decided more quickly.

8 I haven't, frankly, worked out a specific proposed
9 timetable for that. But the key thing on that for me would be
10 my ability to evaluate whether the proposed amendment would
11 warrant any change in the plan to hear essentially the issues
12 that have already been briefed first before the full lift stay
13 hearing.

14 MR. FIRESTEIN: Well, naturally, Your Honor, we'll do
15 what the Court directs us to do. Let me make one observation
16 about that. It could then involve, and I realize we all work
17 for a living, but it would mean potentially that we are
18 needing to potentially oppose the entirety of the lift stays
19 prior to the 30th. The 30th is the due date. The 29th is the
20 date of the Omnibus.

21 And I just -- if we are meeting and conferring within
22 a couple of days, as we suggested in our proposed revisions to
23 the Order, and then we don't have the -- I'm trying to
24 understand when that issue of -- whether there would be a
25 preliminary hearing decided upon, so we knew what it was that

1 we were doing before we have to engage in a full scale
2 opposition to the lift stays, which would otherwise be due the
3 day after the Omnibus.

4 I'm not sure if what I'm saying is making sense, but
5 I'm trying to understand. There could be multiple oppositions
6 going on at the same time.

7 THE COURT: Well, I think -- I read your proposal on
8 the meet and confer and preliminary hearing structure as a
9 fallback to an agreement -- failure of an agreement to put
10 everything off until after the Rule 12 motions --

11 MR. FIRESTEIN: Correct.

12 THE COURT: -- to contemplate the construction of a
13 modified briefing schedule for the preliminary hearing that
14 would be cued up for me to consider, along with other
15 proposals to modify these interim orders if indeed this
16 structure is still in play after the amended report.

17 And in order to give the movants some assurance that
18 this doesn't mean automatic limbo until the end of Rule 12
19 proceedings, I would put a -- we have to address 362(e).

20 MR. FIRESTEIN: Correct.

21 THE COURT: Even in the context of the mediation
22 team's proposals, which is a timetable that goes out beyond
23 362(e). And so I would first of all expect that there would
24 be an appropriate proposal for briefing for the preliminary
25 hearing, and then I would provide that 362(e) is deemed waived

1 for let's call it 45 days after the hearing on the -- after
2 the preliminary hearing, which would give time for any
3 supplemental -- if I find that there isn't compelling reason
4 to put it off until the end of Rule 12, that would give time
5 for supplemental briefing to finish up the lift stay and a
6 final hearing and resolution of the lift stay.

7 MR. FIRESTEIN: So there's an intermediate date,
8 which in the absence of compelling circumstances, the fuller
9 opposition to the lift stay would be due subsequent to the
10 resolution of the hearing issues as an alternative to putting
11 it off to the 12(b) resolution?

12 THE COURT: Yes.

13 MR. FIRESTEIN: Okay. Understood.

14 THE COURT: This is all complicated.

15 MR. FIRESTEIN: It is. And probably only known to
16 those of us who spent hours trying to navigate through the
17 language that we proposed. And frankly, I appreciate the
18 Court's indulgence in having spent the quality time to
19 understand exactly what it is that we're trying to do.

20 THE COURT: That's what I've certainly been trying to
21 do since Friday night.

22 MR. FIRESTEIN: No, I totally understand that. I'm
23 looking at the time and I --

24 THE COURT: Go on.

25 MR. FIRESTEIN: Let me just move on, if I could,

1 | please --

2 | THE COURT: Yes.

3 | MR. FIRESTEIN: -- to the contemplated -- I
4 | understand the Court's guidance with respect to PRIFA, and I
5 | think you may have already addressed the issues as it pertains
6 | to the other lift stay motions which are --

7 | THE COURT: Yes, that is going --

8 | MR. FIRESTEIN: -- an amendment to HTA and to the
9 | CCDA. And if that's the case, I'm happy to move off of that
10 | because I think I understand what the Court's guidance is.

11 | THE COURT: That's my inclination, and I raise it now
12 | and I was explicit about it now, so that others who want to --
13 | will be speaking and may want to react to it, not as favorably
14 | as you seem to be reacting to it, would know what's in play.

15 | MR. FIRESTEIN: I don't wish to show my cards quite
16 | so overtly, Your Honor, but if I may reserve the opportunity
17 | later to rebut whatever is said --

18 | THE COURT: Sure.

19 | MR. FIRESTEIN: Okay. Another issue that I wanted to
20 | focus on is the 305 waiver. There was a lot of debate that
21 | went on, and I'm not here to discuss anything that took place
22 | during the mediation sessions obviously, but we want to be
23 | very clear as to precisely what our consent is under 305 for
24 | the waiver that is proposed.

25 | The ambiguity was created by the use of this term

1 proper affirmative defense. And what the Oversight Board
2 wanted to be very clear about is, look, we have no problem
3 with consenting to those things, which frankly the parties are
4 aware of, that we are intending to bring in these adversary
5 actions and didn't want to be waving into the darkness what we
6 might necessarily see in return, and didn't want to have
7 something jammed into a set of pleadings not knowing in
8 advance what that necessarily was. So we have tried to be
9 very express in what our proposed waiver is.

10 I think the language speaks for itself and goes
11 directly to the nature of the claims and what would be the
12 anticipated defenses that can be expected to be raised to
13 various claims we intend to bring.

14 THE COURT: And so what you're asking for is
15 inclusion in the Order of the full text of your block indented
16 language in I think it's paragraph 17 of your submission. And
17 so the first part says, we consent to the relief that we are
18 requesting, but to the extent relief is requested in
19 counterclaims or otherwise that we would believe would
20 infringe on governmental prerogatives, we don't consent to
21 that for 305. And so that leaves open the ability, as I read
22 it, for those sorts of counterclaims to be filed, but for you
23 to oppose them or seek to dismiss them on the basis that 305
24 precludes them and they don't state a claim.

25 MR. FIRESTEIN: Precisely.

1 THE COURT: All right. I understand you.

2 MR. FIRESTEIN: Okay. The next issue I want to
3 comment upon briefly relates to the briefing limitations and
4 Judge Houser's observations here about the notion of the
5 Oversight Board's suggestion that they be mandated in some
6 way.

7 Look, this is a circumstance in which we are
8 endeavoring to impose gating or governance so to speak on all
9 the parties. And the Oversight Board and its relationship --

10 THE COURT: Can't we discuss the briefing issue in
11 January?

12 MR. FIRESTEIN: Of course.

13 THE COURT: I don't think any opposition papers are
14 really due before January.

15 MR. FIRESTEIN: Of course, Your Honor. You might
16 also take the same view with respect to discovery.

17 THE COURT: Yes, I do.

18 MR. FIRESTEIN: If you'd like to put them off until
19 January, we have some observations, and we've made them about
20 that, but I don't think there's going to be any filings unless
21 the Court is thinking that somehow today magically discovery
22 is going to turn on relative to --

23 THE COURT: My intention, everyone should know, is to
24 take up discovery issues in a more developed context in
25 January.

1 MR. FIRESTEIN: All right. So irrespective of the
2 stay expiring on 12-31, that issue is going to carry over
3 until the next Omnibus; is that how I understand it?

4 THE COURT: That is my intention, yes.

5 MR. FIRESTEIN: Okay. If I can shift for a moment.
6 And I realize I'm over, but I only have a few other --

7 THE COURT: Yes.

8 MR. FIRESTEIN: I have a few other observations, some
9 of which are to the comments that were made by the UCC. I
10 have three specific issues relative to that, one of which is
11 the notion of the resolution of priority. If Your Honor would
12 like to put that over as well until the January Omnibus, I'm
13 happy to pass on that issue and move on.

14 Our view on that is that the mediation report was
15 silent on the issue for a reason, and maybe it will be
16 addressed in the amended report and maybe it will not, but
17 there is no pressing urgency today to have that matter
18 resolved.

19 THE COURT: My expectation is that we'll revisit that
20 in January in the context of the amended report.

21 MR. FIRESTEIN: Something that will be happening,
22 though, between now and the next Omnibus is the request of the
23 UCC to either allow the HTA adversary, or at least one of
24 them, to continue to go forward or to use that as the vehicle
25 for the adversary proceeding that is intended to be brought

1 relative to the HTA bondholders.

2 THE COURT: My intention was to ask Mr. Despins why
3 we can't wait until January to discuss that, and so to the
4 extent you want to take a position or speak to that in that
5 context, knowing that that's the question I'm going to be
6 asking Mr. Despins, you should --

7 MR. FIRESTEIN: The only thing I would say about
8 that, Your Honor, is we do have to file this by January 16.
9 If it turns out the Court makes a different view that somehow
10 the Oversight Board -- that it's not sufficient for the UCC to
11 simply make an effort to intervene in that action as the
12 provisions have been provided for in the interim order or
13 somehow be injected as a co-plaintiff at a later time, I mean,
14 obviously we are not in favor of that. But we do have to file
15 it on the 16th of January, and our current intention is to do
16 so with the Oversight Board as the sole representative of the
17 relevant instrumentality or the government at that time.

18 THE COURT: And so that Mr. Despins understands as
19 well, my inclination at this point is for the complaints to
20 be -- the actions to be filed by the Oversight Board and to
21 process issues of coordination or additional intervention as
22 additional parties after that Complaint is filed in connection
23 with January.

24 MR. FIRESTEIN: I would have no further observation
25 on that point, Your Honor. I am happy to deal with that the

1 next time, and Mr. Despins will make whatever observations he
2 thinks are appropriate when he has his time.

3 THE COURT: Yes. And you have your two minutes of
4 rebuttal reserved. I used a lot of your time to --

5 MR. FIRESTEIN: I only have --

6 THE COURT: -- lay out the landscape.

7 MR. FIRESTEIN: I only have one more issue.

8 THE COURT: Okay. But when we talk, only one of us
9 can talk at a time, and I always win. Remember that.

10 MR. FIRESTEIN: Your Honor, I can feel the tug on my
11 pant leg here, so go --

12 THE COURT: All right. I was just saying that I used
13 your time so I could set the table for everyone else. You had
14 some concluding remarks.

15 MR. FIRESTEIN: I do, Your Honor. I have one other
16 issue which relates to the -- 12(b) and 12(c) get tossed
17 around a lot in relation to these Orders, but one particular
18 one is the 12(c) motion as relates to the PBA adversary. I
19 believe the last three numbers are 149. There is a difference
20 of opinion between the Oversight Board and some of the
21 creditors that filed, or at least Assured is the one that
22 filed and asked for that 12(c) to be reinstated.

23 I note, as a matter of interest, that none of the
24 other filing parties in connection with that adversary
25 advocated for it. I also note that the mediation team

1 consciously made specific reference in the interim report that
2 that 12(c) motion should not be part of what this initial
3 volley is of motion practice that's going to go on.

4 I set the table not knowing what the Court's
5 observation is. I don't know that that's essential to be
6 resolved before the January 29th Omnibus, but I don't know
7 what the Court's observation is going to be relative to that.

8 THE COURT: My expectation is that that is something
9 that would be taken up in connection with the reactions to the
10 amended report in any tweaking that would need to be done to
11 this structure, if we are remaining in full tilt litigation
12 mode after the amended report.

13 MR. FIRESTEIN: Very well, Your Honor. I had some
14 additional observations with respect to Mr. Hein's points.
15 Judge Houser has addressed many of them. And I'll simply
16 reserve a couple minutes to hear what the gentleman has to
17 say, and if I have further observations on that, I'll come
18 back.

19 THE COURT: All right. And do you have any
20 particular reaction to the publication notice on your website
21 idea?

22 MR. FIRESTEIN: Thank you very much for that, Your
23 Honor. Yes. Not only -- yes, I believe that that's an
24 acceptable option, but let me make one other possible
25 recommendation. And they need not be mutually exclusive.

1 Prime Clerk is also a place where those notices could be
2 identified, I presume as a subcategory, and people for no cost
3 can gain access to them.

4 So I merely raise that as something so that people
5 who are used to accessing materials through Prime Clerk can
6 gain access to them in that fashion.

7 THE COURT: And Prime Clerk you've retained as a
8 service provider, and so I could -- if I wish to -- direct you
9 to organize for it to be on the Prime Clerk website, which is
10 a place people already know to go to for information --

11 MR. FIRESTEIN: It does seem simpler that way, but
12 whatever the Court's directive is in that regard --

13 THE COURT: I frankly hadn't thought of that. I was
14 just trying to think of a very central location, and that's
15 already one where people interested in litigation go, so I
16 think that's a good idea.

17 Let me just think if there's anything else that I
18 wanted you to react to before I heard from everybody else.
19 And I think -- I guess the other sort of Mr. Hein-related
20 issue, and Judge Houser touched on this, is that currently the
21 GO/PBA bond proposal contemplates a narrower distribution of
22 the copy of the interim order than the distribution of the
23 notice document, which is proposed to be sent to everybody
24 who's filed a notice of participation for the 2012 bonds, as
25 well as the UCC-related objections.

1 Do you have any issue with having the same thing sent
2 to that whole universe of people who've -- I think the
3 proposal has been -- that's in the document, is for the notice
4 in an English and Spanish document to go to all bond
5 claimants, as well as all notice of participation filers who
6 are on record. And then the interim order on the scheduling
7 was to go to a narrower group that was focused on the UCC
8 objection notice of participation. And I don't see a reason
9 for there to be a difference on that.

10 MR. FIRESTEIN: Two answers, one of which is one
11 word, no. And the second one is no, because whatever the
12 Court wishes us to do relative to service and distribution of
13 materials, we'll follow the Court's directive relative to that
14 in order to have things be as efficient as we possibly can and
15 maximize the province of due process as we go through this
16 whole --

17 THE COURT: Great. So no objection to going broader?

18 MR. FIRESTEIN: No. It's just postage, right?

19 THE COURT: Thank you.

20 MR. FIRESTEIN: Thank you, Your Honor.

21 THE COURT: Next up is Ambac.

22 Hello, Ms. Miller. I have you down for seven
23 minutes.

24 MS. MILLER: Good morning, Your Honor.

25 THE COURT: Good morning.

1 MS. MILLER: Atara Miller from Milbank on behalf of
2 Ambac. Given Your Honor's remarks, I'm going to try to
3 address my comments to those issues that you've said you're
4 interested in having discussed and not touch on those that are
5 going to be deferred. So I'm optimistic that I won't need all
6 seven of my minutes, although we had a good time negotiating
7 them yesterday.

8 I also am going to start specifically responding to a
9 number of the issues that the Oversight Board raised in their
10 response, because I think our affirmative points I will get to
11 but I think our positions on those are laid out in our papers.
12 And obviously we haven't had an opportunity to put forward our
13 position on some of the Oversight Board's suggestions, and the
14 first one is the one that Judge Houser addressed and that you
15 addressed and that Mr. Firestein addressed, which is the PRIFA
16 Stay Motion.

17 And I'd like to be clear to the Court, as we have
18 been with the Oversight Board, and I think we put this in our
19 Response, that the proposed amendment would do two principal
20 things: One is join the Trustee, which was one of the core
21 bases for the Oversight Board's objection to Ambac's standing
22 with respect to the motion.

23 And second, it would address certain of the other
24 factual allegations that the First Circuit, in its recent
25 decision in *Gracia*, made clear, particularly with respect to

1 movants who are asserting trust-based claims, which is part of
2 the basis for the relief and assertion of secured status that
3 Ambac has asserted.

4 There needs to be a showing of traceability of the
5 trust res, and in particular -- including, in particular, a
6 showing of the lowest intermediate balance. And that relates
7 to one of the other issues I'd like to address this morning,
8 which is some of the critical discovery, which is pretty
9 narrow and tailored, which has been continuously denied, and I
10 think, frankly, is just prejudicing us.

11 And I want to give just a couple of concrete examples
12 of information that has recently come out, which we think is,
13 you know, potentially determinative, but certainly relevant to
14 the motion. One is you will recall on the record at the -- in
15 connection with the mediation stay and the scope of it, and
16 whether the PRIFA motion would go in there, is also the PRIFA
17 2004 discovery motion that was on the Agenda for that day,
18 that got put into mediation.

19 And I'm going to talk about what we think should
20 happen to that going forward, but one -- we were allowed one
21 question and one answer, which AAFAF and the Oversight Board
22 agreed that we could get. And the question was -- that I put
23 on the record was, you know, will you tell us whether the
24 monies that are transferred from this collateral lockbox
25 account into the general fund have a particular designation

1 that says, "for deposit to the benefit of PRIFA," and the
2 answer that came back was yes.

3 We didn't know that. We had no way of knowing it.
4 We suspected it. But that's the kind of basic information
5 that clearly goes to whether or not there is a lien on these
6 assets and whether they're part of the secured res that the
7 Court should at least be allowed to have and consider in
8 connection with those motions.

9 Another example is the -- and I think Mr. Friedman
10 actually mentioned this, the Oversight Board -- sorry, AAFAF's
11 press release from last week talking about the general fund
12 and the fact that despite kind of what we've all understood it
13 to be, the single massive account where cash just sits. In
14 fact, that's not true, but there are subinvestment accounts
15 where money, as one would expect, is actually moved into
16 investment accounts for I don't know how much or how long or
17 how those are designated or how the monies flow. But it's
18 clear that basic account balances and flow of funds is
19 critical information that's necessary.

20 We would like to amend, to update with the public
21 information. We also think that it's necessary and
22 appropriate for additional flow of funds and cash balance
23 information to be provided.

24 I want to address your proposal of having a
25 preliminary hearing that bifurcates the issues at least on a

1 preliminary basis and then considers whether there should be
2 further extension.

3 THE COURT: And I had already set that structure
4 before the stay went on.

5 MS. MILLER: So that structure had been set with
6 respect -- well, it wasn't -- not exactly that structure, but
7 a similar structure, yes, was set --

8 THE COURT: It said that there would be a hearing on
9 what I think we characterized as standing and secured status
10 issues, and then the discovery and the remainder of the lift
11 stay issues would be addressed.

12 MS. MILLER: Exactly. And I think we objected to
13 that. Now, we still think it is ill-advised, in particular
14 because, in the circumstance, we just don't think that there
15 would be or is any compelling reason to defer and further
16 extend the period on the lift stays.

17 You know, the cases that they cite, *San Bernardino*,
18 for example, where you're holding for determination -- and
19 this really goes to the question of are we bifurcating so that
20 we can consider consolidation, which is their position, and we
21 have a fundamental issue with consolidation. It's not
22 appropriate. Lift stays and the adversaries are different
23 procedures under the Bankruptcy Rules, and seeking to
24 consolidate would entirely abrogate creditors' rights to lift
25 the stay. The First Circuit's cautioned against doing that.

1 THE COURT: I understand your point, and I'm afraid
2 that I was unclear and I may not have fully, you know,
3 connected all the dots here in thinking about what I'm going
4 to do with these Orders in the short term. There is a
5 bifurcation decision with respect to your motion, what will be
6 argued first, that I imposed over your objection. Then the
7 bifurcation issue in conjunction -- in connection with the
8 proposal for consolidation of all of the litigation is
9 different, and that would put on the Oversight Board the
10 obligation to show a compelling reason to put determination of
11 lift stay motions out very far. And that is its own set of
12 arguments and standards. So I understand.

13 MS. MILLER: And we reserve.

14 THE COURT: Yes.

15 MS. MILLER: And I think in our papers we said we're
16 not going to fight that fight today. We expect that the Court
17 will decide that on a full record.

18 THE COURT: Yes.

19 MS. MILLER: One other comment with respect to the
20 Court's proposal, which was that Ambac filed a Motion to Amend
21 the PRIFA Stay. You know, we think that procedurally that is
22 not the proper mechanism with respect to a motion. I think we
23 have a right to move Rule 7015 is not incorporated with
24 respect to contested matters. There are cases --

25 THE COURT: But I can incorporate it.

1 MS. MILLER: You can use it. You know, I think the
2 Courts -- the cases that hold that it can be used have
3 addressed the fact that the liberal pleading standard and --
4 the liberal standard applying to motions to amend could be and
5 should be applied to the extent there is a motion, but I don't
6 think there is any requirement that a Court has ever said a
7 party cannot amend unless they formally move to amend. I
8 think we have a right to amend under the Rules, and I think if
9 the Oversight Board wants to object or wants to oppose it,
10 including on the basis that it's an improper amendment, they
11 have every opportunity to do that.

12 So I see that I'm now over, and I thought I would
13 have spare time. I feel like there was one other issue that I
14 wanted to address. Oh, just one word, if the Court will
15 indulge me.

16 THE COURT: Yes.

17 MS. MILLER: On the PRIFA 2004 motion, the mediator's
18 interim report would propose having the stay extended and
19 continue to apply to that. You'll recall, perhaps, that that
20 PRIFA 2004 motion, at the Oversight Board's insistence, was
21 put into mediation in -- as a condition of their agreement
22 that the PRIFA Lift Stay Motion be allowed into mediation so
23 that all revenue, bond-related issues could be addressed
24 together.

25 With the stay being lifted with respect to the Stay

1 Motion, I haven't heard an articulated basis for the PRIFA
2 2004 motion continuing to be subject to the stay. And the
3 Oversight Board's principal argument in objection to -- in
4 objecting to that motion was the pending proceeding doctrine,
5 which is one that the Oversight Board has raised over and
6 over, repeatedly, recently. And in particular, most recently,
7 in connection with their motion to strike our cash -- 2004 and
8 motion for sanctions for filing it, where they have suggested
9 that the pending proceeding doctrine expressly precludes the
10 two -- application of 2004 to any matter related to any issue
11 implicated by the Plan. And I think the creditors would
12 really benefit from clarity on that issue sooner rather than
13 later.

14 THE COURT: Thank you.

15 MS. MILLER: Thank you.

16 THE COURT: Next is Assured, for seven minutes.

17 MR. SERVAIS: Thank you, Your Honor. Casey Servais
18 from Cadwalader, Wickersham & Taft, on behalf of Assured.

19 I had initially had three points that I wanted to
20 address. First, Assured's proposed addition to the GO-PBA
21 Order; second, Assured's proposed addition to the revenue bond
22 Order; and third, at least some of the FOMB's proposed
23 revisions.

24 With respect to the GO-PBA Order, as Mr. Firestein
25 noted, we only proposed one addition. We did not propose to

1 modify anything that the mediation team had proposed. Our
2 proposal was that in view of key overlapping issues between
3 the PBA adversary proceeding and the GO claim objections, the
4 PBA adversary proceeding should go forward on the same
5 schedule.

6 Your Honor has indicated that you would prefer to
7 consider that issue in January. That's fine with us. Under
8 our proposed schedule, the next thing that would have to occur
9 in the PBA adversary proceeding is that Assured would file its
10 Reply in support of the 12(c) motion. The rest of the 12(c)
11 motion is entirely briefed. The FOMB has already filed its
12 opposition. All that has to happen is we would file our
13 Reply.

14 We propose to do that on the same date that replies
15 are due with respect to the motions to dismiss the claims
16 objections, which is April 8th. The only thing we are
17 concerned about is if this issue is deferred to January, that
18 the FOMB at that point might argue that there are other things
19 that have to be done within that adversary proceeding that
20 cannot be done before April 8.

21 So as long as we are all agreed that the issue in
22 January will be whether Assured may file its Reply on April
23 8th or not, and that nothing else needs to happen in the
24 adversary proceeding prior to that deadline, then we don't
25 have any objection with moving that issue to January.

1 THE COURT: Well, what would be the problem with my
2 hearing at the end of January arguments about, you know, God
3 knows what should happen between January and April, and making
4 a decision on that in proximity to the January Omni?

5 MR. SERVAIS: Right. That is absolutely acceptable.
6 Our only concern is that the FOMB could say there's something
7 else that needs to occur in the adversary that will require
8 four months.

9 It would have been possible to take those additional
10 steps as of this hearing in December, but because the hearing
11 was delayed until January, there is no longer time to complete
12 everything that needs to be completed in the adversary
13 proceeding. I don't know what that would be as long -- our
14 point is simply by consenting to move the issue of our
15 proposed schedule to January, the FOMB is waiving any right to
16 say that something -- that somehow, because of that move to
17 January, the schedule would be too compressed for our proposed
18 schedule to be adhered to.

19 THE COURT: And so in agreeing to move it to January,
20 you are making it clear that your position is that the 12(c)
21 motion should be fully briefed on that April 8th timetable and
22 you're not signaling a willingness to have that slide if
23 somebody else wants to do something else.

24 MR. SERVAIS: Exactly. Precisely.

25 THE COURT: Thank you.

1 MR. SERVAIS: Thank you very much, Your Honor.

2 With respect to the revenue bond orders, we also had
3 one proposed addition there which went to the issue of the
4 scheduling of the PRIFA Lift Stay Motion. Our -- I mean, we
5 support Ambac's right to amend their Lift Stay Motion. We
6 would probably join such an amended motion.

7 We reserve our rights on bifurcation. We don't have
8 any particular view on that at this moment. Our concerns
9 really went to something more fundamental, which is that there
10 should be clarity that all of the lift stay motions will be
11 heard on the same schedule.

12 To the extent Your Honor's inclined to impose meet
13 and confer obligations, we're obviously willing to meet and
14 confer, but we feel it should take place against a backdrop
15 where it's clear that whatever schedule is agreed to will
16 apply to all the lift stay motions. And the reason for that
17 is, again, the lift stay motions also implicate overlapping
18 key issues: The clawback Order, the moratorium Order, what
19 constitutes a valid clawback under the Puerto Rico
20 Constitution, various constitutional issues, Takings Clause,
21 Contracts Clause.

22 All of those issues are common to the lift stay
23 motions, and Assured could be prejudiced if one lift stay
24 motion were somehow considered in isolation, apart from the
25 others. So we would request that there be clarity at this

1 time that whatever kind of process is mandated, it be
2 clarified that all the lift stay motions will be on the same
3 schedule ultimately.

4 THE COURT: Well, it is clear to me that that is the
5 position that will be taken strongly by the creditors, and I'm
6 hoping that the Oversight Board is hearing that. And the
7 Oversight Board, having heard that it's not getting a
8 pre-January 16 argument on the existing briefing on PRIFA, and
9 that it's going into this meet and confer in that kind of
10 context, I hope and trust will take it into account in
11 formulating its position on coordination, given the fact that
12 their plan A isn't working out, and will listen to and react
13 appropriately to the arguments that there are crosscutting
14 issues that would more efficiently be processed together.

15 I don't feel I'm in an appropriate position to impose
16 that structure today based on my reading of these position
17 statements over the past 72 hours or so. That's why I'm
18 requiring the meet and confer.

19 MR. SERVAIS: Thank you, Your Honor.

20 So very briefly, I would like to respond to some of
21 the FOMB's proposed revisions, specifically with respect to
22 Section 305. We support the mediation team's interpretation
23 of Section 305, which is that if the FOMB chooses to file an
24 adversary proceeding, it is by definition consenting to the
25 defendants asserting, quote, any appropriate affirmative

1 defense.

2 I would point out in this context that no one is
3 forcing the FOMB to file any adversary proceedings. If they
4 do not want defendants to be able to exercise their due
5 process rights to assert appropriate affirmative defenses,
6 they can simply refrain from filing an adversary proceeding in
7 the first instance. We think that that is the correct
8 interpretation of Section 305.

9 What the FOMB has proposed is that they can
10 essentially micromanage what defenses a defendant is entitled
11 to assert. They go through and list discreet issues that are
12 allowed to be addressed. They specifically identify other
13 issues that cannot be addressed. That does not constitute due
14 process. And if that is the position adopted in the Order
15 with respect to Section 305, Assured would likely challenge
16 that on due process grounds.

17 THE COURT: Well, what I'm hearing from you, and what
18 was suggested by the Oversight Board, is that there is an
19 issue as to legal interpretation of 305. My inclination is to
20 -- in order to stake out the territory on whatever that legal
21 issue is going to be, I include in the revenue bond Order a
22 paragraph that says, "the Oversight Board takes the following
23 position as to 305," quotes the Oversight Board's paragraph,
24 and everybody can fight about what significance that has and
25 whether there's a waiver in filing the adversaries. And that

1 can be done in the context of more fully developed briefing.

2 I am not prepared to take an interpretive position on
3 305 now, and I'm also not prepared to undermine their ability
4 to take their position as to what they think 305 means right
5 now.

6 MR. SERVAIS: Thank you, Your Honor. Would you
7 consider also including in the Order the mediation team's
8 proposed language regarding 305 as an alternative to the
9 Oversight Board's?

10 THE COURT: I'm not sure I quite envision what you --
11 what I had envisioned -- not really having been twigged to
12 this aspect of the controversy -- was to take the mediation
13 team's proposed order and bang onto the end of it a paragraph
14 that says the Oversight Board says this.

15 MR. SERVAIS: Okay. That would be acceptable. We
16 just strongly support the mediation team's interpretation of
17 305 and would like to really see that reflected in the
18 Order.

19 THE COURT: I hear you.

20 MR. SERVAIS: Thank you very much, Your Honor.

21 THE COURT: All right. Next is FGIC.

22 Good morning, Mr. Sosland.

23 MR. SOSLAND: Good morning, Your Honor. Martin
24 Sosland for Financial Guaranty Insurance Company.

25 Having listened to Your Honor, I will jump into a

1 matter that relates to what will happen to one item between
2 now and January 30th, and if I have time, preview something
3 else. But Your Honor, I want to go directly to the filing of
4 the adversary complaints by the Oversight Board, and start
5 with one piece of background on the mediator's Order and then
6 some of the provisions we are arguing about and that have been
7 addressed in the Responses that have been filed.

8 So the mediation team Order, the mediation team
9 recommendation, as well as the report and the proposed order
10 references the potential for four adversary complaints that
11 would be filed by the Oversight Board. Three of those
12 adversary complaints relate to claims that have been filed
13 against the Commonwealth, to-wit, that relate to revenue bonds
14 and theories regarding misappropriation, et cetera. We don't
15 need to go into the substance now, but the point is that there
16 are no -- there are no claim objections yet filed by the
17 Oversight Board against the various claimants who have filed
18 those claims.

19 And those three -- three of those adversary
20 proceedings are completely new, and there's no disagreement
21 that the adversary proceedings, in terms of procedures, should
22 be filed or will be filed, and that we'll litigate them,
23 although ultimately we may have some -- we have a lot of
24 disputes about the substance and maybe even about the
25 procedures.

1 One of the -- the fourth complaint that would be
2 filed, new complaint that would be filed relates to claims --
3 relates to Proofs of Claim filed by various claimants against
4 HTA, and as the mediation report explains, are already the
5 subject of four pending adversary proceedings. Those are
6 19-362 through 365. And one of the reasons the mediators
7 explain for a new adversary complaint is that there are over
8 100 claimants apparently that are defendants in the four -- in
9 the combined four adversary proceedings.

10 What we learned, however, when the -- when we saw
11 the -- all of the final mediator's report, and including the
12 exhibits and the procedures Order, is that the putative
13 defendants to the new adversary proceeding that would be
14 filed, there are five bullet points with -- actually, six
15 entities, because Assured is two different legal entities on
16 one of the bullet points.

17 All six of those entities are defendants in one
18 adversary proceeding. That adversary proceeding is 19-363.
19 The 19-363 is an adversary proceeding in which not only has
20 the -- was it commenced by the Complaint filed by the
21 Oversight Board, but FGIC answered and filed counterclaims.
22 All of those have been served. Both the original Complaint
23 and the counterclaims filed by FGIC have been served pursuant
24 to the provisions that the Court entered on July 24th.

25 And the mediator's report says, both in the report at

1 | page six and in the Order -- in paragraph four of the proposed
2 | Order, says that 363 would be stayed on the assumption that
3 | all of the claims and all of the counterclaims that are
4 | already raised in the adversary proceedings, in 363, are going
5 | to go forward in the new complaint.

6 | Now that we've seen that, really the only parties
7 | that are going to be defendants in the proposed new adversary
8 | proceeding are already defendants in 363. And now that we've
9 | seen the language that the Oversight Board is proposing in its
10 | response that marks up what the content of the -- of the new
11 | adversaries are, FGIC submits that there's no reason that
12 | we've seen that -- there's no reason for 363 to remain stayed
13 | or for the Oversight Board to file a new adversary proceeding
14 | relating to HTA.

15 | Those -- I don't know whether the Complaint that the
16 | Oversight Board contemplates, by the language that it included
17 | in its proposed revised language, is the same. The mediators
18 | propose that if they file something different, then I can
19 | file, or one of the other defendants can file a motion with
20 | you seeking appropriate relief. As we said in our written
21 | response, we don't think we should have to go through that
22 | step. We filed that before we saw the Oversight Board's
23 | Response.

24 | So our proposal would be that 363 simply goes forward
25 | as is, and that if it's desirable or necessary, they can sever

1 the defendants that aren't listed on Exhibit A to the
2 mediator's report. And, you know, this actually goes to the
3 305 issue.

4 So in one of the counts, I don't know, based on what
5 I just read, exactly what it is that the Oversight Board's
6 going to allege, but in the existing Complaint, 363, the
7 Oversight Board argues preemption, based among other things on
8 201 and 202 of PROMESA, and the powers that the Oversight
9 Board says it has, and why that means that we don't have
10 liens, notwithstanding any other law to the contrary.

11 We disagree on the substance, but the Oversight Board
12 makes those allegations. They also allege that that means
13 there's an actual justiciable controversy that's ripe for
14 determination by the Court. We answered that. We've teed it
15 up in our counterclaim. We think it's ready to go forward.

16 If they want to argue somehow they haven't consented,
17 we'll have the substantive hearing before you on whether or
18 not that constitutes consent on the issues that we've raised
19 and that they've answered. But it's already teed up, and
20 having to go through another round of adversary proceeding
21 complaint, answers, or other responsive pleadings, arguments
22 about 305, we actually think the proposal to leave 363 in
23 place will conserve resources because you've already got those
24 papers in front of you. And at most, a motion or a severance
25 of the other defendants is all that's needed.

1 If I -- one more thing about Section 305.

2 THE COURT: Briefly.

3 MR. SOSLAND: Your Honor, we don't think -- if the
4 inclination of the Court is to adopt the language that's
5 proposed by the mediators, we don't think --

6 THE COURT: The inclination is to say, as to what the
7 Board is saying, to simply record that the Board is saying
8 that. So --

9 MR. SOSLAND: But -- and Your Honor, my question
10 would be why. Why say -- to adopt the mediator's paragraph
11 followed by something where the Court's saying, this is the
12 Board's position, is that a finding or a conclusion? And if
13 neither, why is it in there? Or wouldn't it be equally
14 appropriate to say, and the position of the bondholders or the
15 monolines is X?

16 I really don't think that would be an appropriate
17 provision in an order.

18 THE COURT: Well, the Board has -- I don't want to
19 belabor this right now because I want to hear everybody, but
20 I'm going to try to give you a response that's meaningful to
21 me. The Board, under 305, has a particular power to waive or
22 not waive, and that makes it different than other parties.
23 And I can't force the Board to waive anything.

24 And so if there is an issue as to whether the Board
25 is willing to waive something and there is a legal question of

1 | whether by adopting an order or by filing a complaint in
2 | accordance with an order I adopted, the Board has, you know,
3 | nonetheless implicitly waived something that it doesn't intend
4 | to waive, I think the position that the Board may believe
5 | there is tension between the structure and its intended
6 | exercise of the power of which it has control, it's better to
7 | have that laid out. And then we'll figure out what it all
8 | means later.

9 | But I can't make them waive something. You can argue
10 | that something they do waives it, but that's an issue for
11 | adjudication later. That's why I would include both.

12 | MR. SOSLAND: Thank you. I'll reserve my other
13 | points for January.

14 | THE COURT: You don't have to agree with that, but
15 | that's my explanation.

16 | MR. SOSLAND: Understood, Your Honor.

17 | THE COURT: Thank you.

18 | All right. So Mr. Despins.

19 | MR. DESPINS: Good morning, Your Honor.

20 | THE COURT: Good morning.

21 | MR. DESPINS: Luc Despins with Paul Hastings on
22 | behalf of the Committee. So we heard you loud and clear about
23 | moving most of what we raised to January, so our rights are
24 | fully reserved on that.

25 | I would just note for two seconds that this is

1 | probably one of the first times in the case that the Committee
2 | and Assured are actually in agreement on something, which is
3 | that the 12(c) reply should be filed and the Court should rule
4 | on that true lease litigation, but we're reserving that to
5 | January.

6 | So I'm left with two issues, therefore, and it's the
7 | issue of the Committee's status as a co-plaintiff in the
8 | pending HTA adversary proceedings. So I heard what Your Honor
9 | said. The thing is that I want to be clear that we're not
10 | writing on a clean slate here. There was an extensive
11 | stipulation that was Ordered by the Court which provides that
12 | we are a co-plaintiff in the HTA litigation and eight claims
13 | or nine claims that have been filed. These are the claims
14 | that they want to refile in a separate litigation.

15 | That stipulation says that neither party can push the
16 | other aside from that adversary proceeding unless they comply
17 | with paragraph eight of that stipulation, and that paragraph
18 | says that they have to establish that we have not prosecuted
19 | the adversary proceeding in an adequate and timely fashion.
20 | Well, they have not attempted to do that. I don't think they
21 | would ever say that, and, therefore, that's the issue, is that
22 | -- and that stipulation has a no modification provision, Your
23 | Honor.

24 | Section 21 says that unless both parties consent,
25 | that stipulation cannot be modified. We bargained for that.

1 Remember, there were Section 546 statute of limitation issues
2 and the Supreme Court issue, et cetera, et cetera. I'm not
3 going to belabor that, but it would be kind of a neat trick
4 where you can bypass all this by refiling the exact same
5 counts with naming the same parties, but with a narrow group
6 of people with additional claims, and then you completely
7 bypass that provision. So that's really our argument, which
8 that -- that the Board should not be able to do.

9 And then my next issue is with the DRA motion to lift
10 the stay. You know, we said that that Order provides that
11 only the Oversight Board and the government, AAFAF, can file
12 pleadings and opposition, and we are saying that the Committee
13 should be able to file pleadings on opposition as well. I
14 believe the DRA folks filed some response saying that we need
15 to intervene to have that right. This is not an adversary
16 proceeding. This is a contested matter. It's a motion to
17 lift the stay. And I'm not aware of any requirement to file
18 an intervention motion to be heard in a contested matter by
19 the Committee.

20 So these are two points. We understand that the
21 other issues, including briefing, the limitations on briefing,
22 are left for January.

23 THE COURT: All right. I think my inclination on the
24 DRA participation issue is that I want you to meet and confer
25 on that and see if you can work that out with them. It didn't

1 | seem to me clear from the papers that there had been an effort
2 | to come to a place of agreement on that briefing issue and
3 | that, in the worst case, it could be resolved in January
4 | without doing violence to the lift stay briefing calendar.

5 | MR. DESPINS: Understood, Your Honor. We'll do that.

6 | THE COURT: Thank you.

7 | So on the co-plaintiff issue, I'm going to expect to
8 | be hearing the Oversight Board's reaction to the argument
9 | regarding the stipulation when Mr. Firestein comes back on the
10 | reply.

11 | MR. DESPINS: Thank you, Your Honor.

12 | THE COURT: Thank you.

13 | And I will also, just to keep the score card here,
14 | expect to be hearing from the Oversight Board a response to
15 | Mr. Sosland's argument that 363 already does everything that
16 | the proposed complaint would do.

17 | All right. Next is Mr. Hein, who's speaking from New
18 | York.

19 | MR. HEIN: Thank you.

20 | THE COURT: Good morning, Mr. Hein.

21 | MR. HEIN: Thank you, Your Honor.

22 | I have several discrete points. First, I wish to
23 | respectfully reiterate my position that if FOMB and the UCC
24 | seek to pursue issues as to the validity, priority and secured
25 | status of Commonwealth bonds, there needs to be an

1 adjudication of those issues by the Court on a public record,
2 with appellate review as necessary.

3 I continue to object to the use of confidential
4 mediation that excludes individual investors from meaningful
5 and effective participation that leaves no contemporaneous --
6 that leaves no contemporaneous public record, that is done
7 behind closed doors. Even the press cannot observe and report
8 on what occurs so that people can read about it in the press.

9 On the notice issue, Your Honor, my concern is that
10 you've had over 1,700 individuals submit Notices of
11 Participation, and even more submit Proofs of Claim. Yet, in
12 the past six months, there have been a series of motions, and
13 indeed a number of urgent motions for relief with respect to
14 stay and mediation for which no notice has been given.

15 With respect to the 2011 claims objection, that was
16 filed, I believe, back in May. And seven months later, still
17 no notice.

18 On the content of the notice, I have identified in my
19 Response, that's docket 9508, docket pages six and seven of
20 24, some of the points that I would urge be addressed in a
21 notice, which I think needs to be clear and needs to be
22 prepared in a way that is going to be comprehensible to
23 individuals who have not been participants in the mediation,
24 don't have the background and knowledge that participants in
25 the mediation have.

1 Fourth point. In my view, there is no justification
2 for imposing on individual bondholders restrictions on content
3 of papers or page limits that do not apply across the board to
4 all parties. However, I understood Your Honor to be saying
5 that that issue was being deferred to January and, therefore,
6 I will pass that for the moment.

7 Fifth point. I believe measures do need to be taken
8 to level the playing field. I realize, Your Honor, that I've
9 raised these points before, but if the Court is permitting
10 FOMB and UCC to proceed in an omnibus fashion in return, I
11 believe the Court should take steps to ensure that the
12 interests of individual bondholders are protected.

13 Electronic filing, which I've raised. The District
14 of Puerto Rico CM/ECF Manual expressly provides on page six,
15 "the Court may also grant a pro se litigant access to file
16 electronically in a particular case." I repeat my view that
17 the Court should do so here.

18 Transcripts. Transcripts need to be made able to pro
19 se litigants on a timely basis. And respectfully, if the
20 Court is willing to approve 500,000 dollars plus for Croma
21 advertising to help the Unsecured Creditors' Committee with
22 public relations and monitoring Puerto Rico media, and
23 literally tens of millions of dollars of fees to litigation
24 counsel for unsecured creditors, as well as the FOMB, the
25 modest cost to compensate court reporters so transcripts can

1 go up on Prime Clerk as soon as they are available, I
2 respectfully submit can likewise be approved by the Court.

3 A bondholder committee. I realize the Court has
4 previously declined to appoint a bondholder committee that
5 would represent individual bondholders, but if the Court is
6 concerned about the practicalities of managing a case with
7 1,700 plus participants, I repeat my view that a bondholder
8 committee could be a solution.

9 And a final point concerning mediation
10 confidentiality. Respectfully, I believe there either has to
11 be a strict observance of mediation confidentiality, meaning
12 no one, including the FOMB or, respectfully, the mediation
13 team, will reference what occurred in or resulted from
14 mediation or will observe the robust nature of the mediation
15 process in court papers or hearings, or alternatively, the
16 confidentiality restrictions should be released.

17 I believe that confidentiality is Ordered, and I
18 object to it, but if it's Ordered, it must be consistently
19 observed. And confidentiality should not be used as both a
20 sword and a shield.

21 Thank you, Your Honor.

22 THE COURT: Thank you, Mr. Hein.

23 Next is AAFAF. Mr. Friedman.

24 MR. FRIEDMAN: Your Honor.

25 THE COURT: I need you at the podium.

1 It's Mr. Friedman.

2 MR. FRIEDMAN: Peter Friedman. I'm going to yield
3 virtually all my time to the Board. I just want to say the
4 complaints about the mediation process, and how they were --
5 what they lead to in COFINA for Mr. Hein are just really
6 divorced from the realities of the situation.

7 The Court's approval of the COFINA deal after
8 mediation -- after the mediation session, and the idea that
9 anybody's being excluded from the mediation process or that
10 the mediation process isn't beneficial, I just could not
11 disagree more strongly.

12 And I'm just going to yield the rest of my time to
13 the Oversight Board to respond to some of the questions that
14 were raised. I think it's most productive, because we're
15 aligned with the Oversight Board on these issues.

16 THE COURT: Thank you, Mr. Friedman.

17 Next, the representative of National, speaking from
18 New York. I think we may have an audio -- sir, would you say
19 testing one, two, three?

20 MR. BEREZIN: Testing one, two, three.

21 THE COURT: Okay. That's fine. There's no audio
22 problem.

23 MR. BEREZIN: Okay. Great. Robert Berezin from
24 Weil, Gotshal & Manges on behalf of National Public Finance
25 Guarantee Corp.

1 Your Honor, National's view is that the Board's
2 position on 305 is incorrect. And if it is correct, it raises
3 very serious due process issues.

4 And National certainly agrees with the Court that the
5 Scheduling Order should not decide substantive 305 issues.
6 That's entirely inappropriate. But, you know, in light of
7 Your Honor's comments, we would have to note that there is
8 obviously going to be for some time continued uncertainty
9 about whether all of the HTA issues are going to be able to be
10 heard in this Court. And that makes the HTA Lift Stay Motions
11 and hearing those motions on a final basis as quickly as
12 possible all the more important to preserve bondholder rights.
13 And for that reason, National strongly opposes any further
14 delay of the final lift stay hearing.

15 And notwithstanding the Court's inclination in that
16 regard, because, as we view certainly the Oversight Board's
17 proposal, they really work in tandem and have to be viewed
18 that way. It's under its 305 position. It's essentially
19 going to bar the doors of this Court from hearing all of the
20 necessary 30 -- HTA issues, while also delaying and preventing
21 another Court from hearing those very same issues through
22 the -- by delaying the lift stay proceeding.

23 So for that reason, Your Honor, we would just urge
24 the Court to schedule the HTA lift stay hearings as soon as
25 possible. And we also would state for the record that we

1 oppose all of the Board's proposed changes to the mediator's
2 Scheduling Order and just further reserve all of our rights.

3 THE COURT: Thank you, sir.

4 MR. BEREZIN: Thank you, Your Honor.

5 THE COURT: And now the DRA parties, also speaking
6 from New York.

7 MR. MINTZ: Thank you, Your Honor. Good morning.

8 THE COURT: Good morning.

9 MR. MINTZ: Doug Mintz from Orrick on behalf of the
10 DRA parties and the collateral monitor, and joined here by our
11 co-counsel Nayuan Zouairabani of McConnell Valdes on behalf of
12 the DRA parties and the servicer.

13 THE COURT: Sir, would you just say your name one
14 more time, please?

15 MR. MINTZ: Doug Mintz of Orrick, Herrington &
16 Sutcliffe.

17 THE COURT: It cut out. So I heard Orrick,
18 Herrington & Sutcliffe, but your name?

19 MR. MINTZ: Yes. Can you hear me okay right now,
20 Your Honor?

21 THE COURT: Now I can.

22 MR. MINTZ: Thank you. Doug Mintz from Orrick
23 Herrington & Sutcliffe.

24 THE COURT: Thank you.

25 MR. MINTZ: Thank you, Your Honor.

1 We are here regarding two discrete issues and filed
2 two separate reservations. The first pertaining to a
3 potential conflict between the schedules detailed on Exhibit
4 Two to the report and Exhibit Three to the report; and the
5 second pertaining to the issue Mr. Despins referred to, which
6 I believe you've asked us to push over to next month,
7 regarding their ability to participate in the litigation
8 detailed in Exhibit Three to the report.

9 With respect to the first issue, we believe there is
10 a potential prejudicial conflict in the schedule attached as
11 Exhibit Two to the report, which is the interim schedule
12 proposed for the bond revenue litigation, and Exhibit Three to
13 the report, which is a stipulation the DRA parties reached
14 with AAFAF and the Oversight Board regarding an argument they
15 have raised regarding the DRA parties' standing to bring a
16 lift stay motion that the DRA parties have filed.

17 As you may recall, the DRA parties filed a lift stay
18 motion in June of this year pertaining to the diversion of
19 certain pledged revenues from HTA to the Commonwealth.
20 Assured and National filed a similar lift stay motion in
21 August. Both of those lift stay motions address the diversion
22 of certain excise taxes, such as cigarette taxes, gas and
23 diesel taxes and registration fees from HTA to the
24 Commonwealth.

25 With respect to Exhibit Three, the DRA parties

1 negotiated a schedule regarding this potential standing issue
2 related to the DRA parties' ability to file a lift stay motion
3 and reach consensus with the Oversight Board and AAFAF to hold
4 briefings and hearings on this issue from February through
5 April.

6 At the same time, through the vagaries of the
7 mediation process, the mediators were working on Exhibit Two.
8 We weren't aware of this. That would address the monolines'
9 lift stay motion, as well as the potential adversaries that
10 people have been discussing. And as most noted, both of those
11 lift stay motions cover much the same territory, but the
12 schedule detailed in Exhibit Two begins with various filings
13 in January before we've had the chance to address our
14 standing. So that could obviously potentially prejudice our
15 clients' rights.

16 Mr. Servais made a very pertinent point, which is
17 that we, too, believe that lift stay proceedings need to be
18 coordinated here. There is potential -- significant potential
19 of overlapping issues, both among the different lift stay
20 motions and certainly here where they're covering the same
21 issues.

22 So as we note in our brief, we may seek to intervene
23 in the HTA Lift Stay Motion, and we're certainly prepared and
24 have reached out to mediators already and are certainly
25 prepared to meet and confer with parties to address this

1 issue. We raise it now only to note the potential problems
2 that -- potential problems caused by deadlines that start
3 before the next hearing.

4 I have nothing further on that, Your Honor.

5 THE COURT: Thank you.

6 Oh, one thing. In the existing DRA stipulation, it
7 contemplates an argument on April 15, which is the date that
8 had been set for the April Omni, but because that is in the
9 week of Passover and Easter, I think, or something like that.
10 We have put the Omni over to April 22nd. And so I think,
11 given the willingness to meet and confer and all the moving
12 pieces here, my inclination would be to approve a version of
13 the DRA stip that has the April 22nd date in it, and in
14 January have another go at the fine tuning of the motion
15 schedules after further input from the mediation team in the
16 amended report and the parties', you know, various
17 consultations before that.

18 So if you don't mind filing a revised version of the
19 DRA stip with April 22nd as the argument date for now, it
20 would be something I'd appreciate.

21 MR. MINTZ: We can certainly do that subject to
22 obviously reserving all our rights on the issues we've just
23 identified.

24 THE COURT: Yes. Absolutely. Thank you.

25 MR. MINTZ: Thank you for your time, Your Honor.

1 THE COURT: All right. So I think that brings us
2 back to Mr. Firestein -- I'm sorry. Ms. Miller.

3 MS. MILLER: Your Honor, in an uncharacteristic way,
4 I'm rising entirely out of turn. So I'll sit down if you tell
5 me to, but I wanted to respond to the Court's thinking on 305,
6 which was brought up in Assured's presentation, in just 45
7 seconds, because I think there's something that's quite
8 apparent to everybody on this side of the bench that is
9 probably not obvious to you.

10 And I was caught by -- in characterizing and
11 describing your thinking about including the Oversight Board's
12 proposed language, that it would be helpful because 305 is
13 expressly a consent issue, and it's helpful to describe the
14 contours of what they are agreeing to, lest there be dispute
15 about some unintentional waiver, if there's something that
16 happens in response to an order or something that they filed
17 that they didn't anticipate.

18 I want to be clear, and I'd like the Court to know
19 that everybody knows exactly what the issue is. And the issue
20 is that in the adversary, the current, pending HTA adversary,
21 the Board directly put in issue, our position, they disagree,
22 Sections 201 and 202 of PROMESA, and in particular the
23 formulation and certification of fiscal plans and budgets,
24 arguing that those preempt all of the -- what they call
25 statutes that allocate various revenues and appropriation of

1 various excise taxes and key revenues to the Commonwealth of
2 Puerto Rico.

3 We think that the language and the narrowing and
4 specific exclusion of those issues in the Board's proposed
5 language is indeed using 305 inappropriately, and would
6 suggest that frankly, understanding of course that the Court
7 can't force the Oversight Board to consent to things that it
8 doesn't consent, that the proposed Order simply be silent on
9 305, both eliminating the mediation team's proposed language,
10 eliminating the need to put in the Oversight Board's
11 contention. And it seems pretty clear that at some point down
12 the road we will be fighting about the scope of 305 and what
13 it means, whether there's consent if you put a particular
14 legal question at issue in your filing.

15 THE COURT: Thank you, Ms. Miller.

16 MS. MILLER: Thank you.

17 THE COURT: All right. Did Ms. Dale want to talk
18 about ERS before we go back for the reply? Thank you.

19 MS. DALE: Thank you, Your Honor.

20 Your Honor, in the Oversight Board's response to the
21 mediation report, at the end, there was a section that related
22 to a request to modify the ERS Scheduling Order to include
23 briefing that related to the administrative expense claims
24 that were filed by the fiscal agent and the bondholders. And
25 there's substantial overlap between the administrative expense

1 claim issues and issues that are being stayed right now in the
2 ERS Scheduling Order.

3 So because of that overlap, we reached out to the
4 fiscal agent counsel and counsel for the bondholders and asked
5 whether they would be agreeable to putting the issues related
6 to the administrative expense claims into the Scheduling Order
7 in the same way that we're doing paragraphs four and five of
8 the Scheduling Order with respect to issues that are being
9 stayed right now, awaiting the outcome of the 552 decision
10 from the First Circuit. And they are agreeable to that.

11 So, Your Honor, you had entered a scheduling order
12 relating to the administrative expense claims. That was at
13 ECF 9322 in case 3283. And we are asking the Court to vacate
14 that Scheduling Order and to modify the ERS Scheduling Order
15 to stay the administrative expense claim motions consistent
16 with paragraphs four and five of the Scheduling Order and
17 subject to further scheduling of those administrative expense
18 claim motions to the meet and confer process that's referred
19 to in paragraph six of the ERS Scheduling Order.

20 And I am happy to prepare an informative motion or a
21 stipulation that accomplishes all that for the Court.

22 THE COURT: The filing either on presentment of the
23 stipulated order or informative motion, but a mechanism that
24 tells me this is what you've all agreed to and would
25 accomplish the changes that you've described would be helpful,

1 and I look forward to seeing that.

2 MS. DALE: Thank you very much.

3 THE COURT: Thank you.

4 Mr. Firestein.

5 MR. FIRESTEIN: Thank you. Thank you, Your Honor.

6 Michael Firestein of Proskauer on behalf of the Oversight
7 Board.

8 So a lot of things have gone on over the past 45
9 minutes or so. I want to -- I'm going to directly address
10 Your Honor's comment and question regarding adversary 363 and
11 Mr. Despins' comment, but one, again, overarching observation
12 I just want to make, and I think the counsel for DRA -- the
13 DRA parties may have alluded to this, but I want to make sure
14 that the Court understands this. The scheduling that occurred
15 was both on the GO side, as well as on the HTA side.

16 And I realize some of this is not going to be
17 addressed until January, but I want the Court to understand
18 that it's a delicate balance that was tried to be reached
19 between the various competing parties. And shockingly, there
20 was -- lift stay issues aside, there was less disagreement
21 than one might have anticipated relative to that. And that
22 was because it was designed to avoid mutually assured
23 destruction in terms of requiring people to be filing multiple
24 briefs at the same time.

25 And so there's a delicate feathering that -- there's

1 a delicate feathering that has occurred --

2 MR. SERVAIS: Your Honor, we object. Mr. Firestein
3 is violating mediation privilege.

4 THE COURT: Let's get to a bottom line on what you do
5 or don't want me to do.

6 MR. FIRESTEIN: The only thing I was saying is that I
7 want to be careful that we don't adjust briefing schedules in
8 advance of the 29th, so that the Court is aware, and I don't
9 think the Court is intending to do that.

10 THE COURT: I think what I said I was going to do is
11 I would approve that stipulation. I am not changing the
12 briefing -- aside from the lift stay stuff that we talked
13 about, I'm not changing the briefing schedules in the Stay
14 Order.

15 MR. FIRESTEIN: That is the only point.

16 THE COURT: And we'll deal with all of it in January
17 in context.

18 MR. FIRESTEIN: Totally fine. And I had absolutely
19 no intention of addressing matters that occurred in the
20 mediation, only to make sure that we were still within the
21 four corners of what the scheduling currently is,
22 notwithstanding what the DRA parties may have advanced.

23 THE COURT: Good. And you all can talk behind the
24 scenes. You're going to be required to meet and confer before
25 January, so --

1 MR. FIRESTEIN: That's fine.

2 THE COURT: -- figure it out.

3 MR. FIRESTEIN: Let me take them in the order that
4 are seemingly of importance to the Court, which relates to the
5 adversary number 363. And I don't mean to conflate
6 Mr. Sosland's comments with Mr. Despins' comments, but the HTA
7 363 proceeding that was filed, that coincidentally happens to
8 include as defendants the various people against whom these
9 new adversaries are going to be brought, was filed at a time
10 that was intended to avoid the statute of limitations.

11 As the Court is well aware, there was a lot of
12 activity that occurred regarding that issue in order to avoid
13 that. It does not include the full array of claims that are
14 intended to be made. And everyone that is in this room knows
15 what the nature of those claims are going to be. And there
16 is -- what would happen is we would end up with an amendment
17 of an existing pleading, a severance of dozens and dozens of
18 parties, for which participation notices are going to be
19 necessary and people are going to have the opportunity to make
20 observations. And this was the path, as recommended in the
21 mediation report, that was agreed upon in terms of going
22 forward.

23 It is not efficient to be able to sort of carve off
24 one of the new adversaries and have it just go through its own
25 little procedural machinations concerning the one to which

1 Mr. Sosland refers or Mr. Despins refers. There is a series
2 of them that are going to be filed, that are going to be on
3 the exact same time frame as one another. And for efficiency
4 purposes, it was intended to allow them to be along that path.

5 I dare say, as intelligent and smart as all the
6 lawyers are, I'm not smart enough to have been able to have
7 figured out how to cleverly navigate, you know, how we were
8 going to carve away certain claims one way or another. It was
9 all intended to be an efficient delivery of claims that could
10 be brought to Your Honor's attention to avoid such things as
11 advisory opinions or other matters, where the parties wanted
12 to have scope and validity of lien established by the Court
13 that would shape the --

14 MR. SOSLAND: Your Honor, objection to any reference
15 to what the parties are doing. Mr. Firestein's stating the
16 Oversight Board's position that -- anything, any reference to
17 what the parties discussed in mediation is inappropriate.
18 It's also mischaracterizing those discussions.

19 THE COURT: The objection to referring to discussions
20 in mediation is sustained.

21 Again, I'm presented with particular scheduling
22 orders. It is not appropriate to give me background color on
23 that out of mediation.

24 MR. FIRESTEIN: Let me frame it this way, Your Honor.
25 If there had been an objection to the filing of the adversary

1 | proceedings, one would have expected to see it in the
2 | responses that were filed and that are a matter of record.

3 | THE COURT: Well --

4 | MR. SERVAIS: Your Honor, I'm happy to speak to that
5 | if you'd like, Your Honor.

6 | THE COURT: Well, I've got a technological problem
7 | and a not wanting to get into these weeds problem. The
8 | technological problem is that anybody who speaks from the back
9 | benches can't be heard by the people in New York or on the
10 | telephone, so the objections and shouting from the back of the
11 | room is really not working.

12 | And what there were -- there have been positions
13 | taken and objections raised to the structure, and specifically
14 | now we're talking about Mr. Sosland advocating for just
15 | tweaking 19-363 and not starting over again, and Mr. Despins
16 | raising a somewhat different objection to not being included
17 | as a plaintiff in whatever it is he's not being -- in HTA or
18 | whatever, saying that that's a violation of a stipulation and
19 | a Court Order. And I do want you to address that point
20 | separately.

21 | So I think one of the things I'm hearing, and the
22 | thing that I am most inclined to hear in what you said so far
23 | is that the Oversight Board's position as to 363 versus new
24 | adversary is that a new adversary is more efficient because
25 | it's coordinated with this plan of new adversaries that will

1 be litigated together. And there would have to be too much
2 tweaking, and there'd be transaction costs to putting a
3 revised 363 into that camp, so we should start with these new
4 ones.

5 And I will tell you and I will tell Mr. Sosland now
6 that my intention is to -- as to Mr. Sosland's objection to
7 the filing of a new adversary, let the new adversary be filed,
8 and then in January, you know, we can talk about whether there
9 is some insurmountable inefficiency with not adapting 363.

10 MR. FIRESTEIN: Fine.

11 THE COURT: So --

12 MR. FIRESTEIN: That's good by me.

13 THE COURT: -- now, Mr. Despins says that filing a
14 new adversary to replace one in which he's a co-plaintiff is a
15 violation of the prior stipulation and my Order. Is that
16 something that you want to come back to in January, or is that
17 something that you have an answer, a response to that I can --
18 you think I can deal with efficiently today?

19 MR. FIRESTEIN: I think it's going to end up being
20 both, Your Honor, but the response is quite short. I believe
21 that the stipulation related to the initial adversaries, and
22 as I noted earlier, the new ones are going to contain
23 additional claims that were not included in the original
24 adversary. And so that's the substantive response. I don't
25 think it's a violation of the stipulation.

1 However, to the extent that we can meet and confer
2 with Mr. Despins over the coming weeks relative to that, he
3 certainly is within his rights to ask the Court, if we do not
4 reach agreement on that subject, to either have him be an
5 intervener or have him be inserted as a co-plaintiff at the
6 time of the January hearing, because nothing is going to have
7 occurred relative to briefing as of the time that we are
8 returning here for the next Omnibus hearing.

9 THE COURT: Thank you.

10 MR. FIRESTEIN: The only other thing that I wanted to
11 mention -- and by the way, let me just make one observation
12 here. I'll move on to one of the issues that Ms. Miller
13 raised. There was a whole lot of discussion about discovery
14 and other matters. I don't think that that has impacted or
15 moved the needle one way or the other relative to what's going
16 on, but let me just make the following statement. The issue
17 of whether Ambac has any security interest in Commonwealth
18 assets, particularly the rum taxes, which was the focus of her
19 comments, is not a function of the lowest intermediate
20 balances. The documents don't provide Ambac a security
21 interest.

22 And I'm not here to argue the Lift Stay Motion. I'm
23 just suggesting that Your Honor's comments that were made as
24 to the manner in which this should be addressed remain
25 consist -- is acceptable to the Oversight Board. And we don't

1 see any reason to adjust that protocol prior to the time that
2 we have to file whatever it is that is going to get filed in
3 the middle of January, whether it's a motion for leave to
4 amend, or the meet and confer, or the amended motions relative
5 to HTA and CCDA. And we think that protocol is acceptable and
6 don't see any reason to adjust that.

7 The only other observation that I wanted to make has
8 to do with a comment that was made relative to 305. The
9 Oversight Board's view is whatever it decides to consent to
10 or, in the view of the Court, has waived, it is going to be a
11 determination made for another day. That's not something
12 that's going to be decided today.

13 Claims have already been filed. Claims are going to
14 be filed. The Oversight Board's -- and whatever the outcome
15 of that is going to be, is going to be. I think the simplest
16 way of phrasing it is that the Oversight Board didn't want to
17 be in a position where jammed into responsive pleadings
18 relative to the adversaries that come were requests for either
19 turnover orders or challenges to the Fiscal Plan. And I think
20 that what we've heard is that there is going to be a
21 reservation of rights with respect to that issue.

22 And the Court's not going to decide that today, but
23 the Court will have whatever motions or issues that are
24 brought to the Court's attention and determine those matters
25 as, if and when those matters arise. But placing into the

1 interim Order what the position is, or what the articulation
2 is of the Oversight Board's view, we don't believe, as putting
3 either a thumb on the scale, much less a feather, as to what
4 the Court's ultimate determination is going to be on how 305
5 is going to be interpreted based upon actions or inactions
6 that parties, including the Oversight Board, have taken in the
7 past, in the present or in the future.

8 THE COURT: Thank you.

9 All right. It is lunch time. I will make my ruling
10 on the mediation matters -- unless Judge Houser wants to speak
11 before we break? Yes, she does. No, she doesn't.

12 HONORABLE CHIEF UNITED STATES BANKRUPTCY COURT

13 JUDGE HOUSER: I do not.

14 THE COURT: Judge Houser does not need to speak
15 before we break, so I will come back with my news after lunch.

16 But Ms. Dale, did you want to speak about the
17 insurance proceeds?

18 MS. DALE: Yes, I did. Thank you, Your Honor.

19 Margaret Dale, and with me is counsel --

20 MR. WARREN: Jim Warren, representing the insurers in
21 the adversary proceeding.

22 THE COURT: Good afternoon, Mr. Warren.

23 MS. DALE: Your Honor, we would appreciate it if we
24 could adjourn this motion to the January Omni, and Mr. Warren
25 and the Oversight Board will address the Court's comments

1 regarding the order and the way that we proceeded, and perhaps
2 submit to -- a reformed motion to address some of those
3 issues.

4 My understanding, by the way, Your Honor, is that the
5 Court has issued Orders relating to insurance proceeds before
6 in connection with the hurricane, and we will look to those,
7 how we proceeded in those to make sure that we are doing what
8 we did before. I think there might have been a disconnect
9 there.

10 THE COURT: Well, you -- I encourage you to look at
11 what you did before. I am aware that certain things were
12 entered before those -- that methodology does not necessarily
13 bind the Court now. Everybody has learning curves, and those
14 things were entered in the immediate aftermath of the
15 hurricane.

16 I have thought about this application in our present
17 context and in the context of my current concerns, and so I
18 just want you to be aware that saying you did it in 2017, you
19 should do it again, is not going to be the answer for me.

20 MS. DALE: No. Understood. I didn't mean to suggest
21 that. I wasn't sure whether we had actually done it in 2017
22 differently than we were doing it in 2019, so we want to go
23 back and review all that. But we understand your concerns.

24 THE COURT: I think there is language in 2017 that
25 may be substantially similar to this. I don't remember what

1 the process was of getting there, but if the process was no
2 broader of notice than there has been now, it would be a
3 problem.

4 MS. DALE: Understood, Your Honor, and thank you for
5 your time.

6 THE COURT: Thank you all. We will resume at 20 past
7 1:00. It's now quarter after 12:00. Have a good lunch
8 everyone, and thank you.

9 (At 12:14 PM, recess taken.)

10 (At 1:30 PM, proceedings reconvened.)

11 THE COURT: Buenas tardes. Please be seated. I have
12 a little technological issue, so please bear with me.

13 MR. DESPINS: Your Honor, just to give you a quick
14 update on the meet and confer regarding the role of the
15 Committee as co-plaintiff, we've started that. No promises,
16 but we are making progress. I just wanted to make sure the
17 Court is aware of that.

18 THE COURT: I'm very pleased to hear that. Thank you
19 for that update.

20 And now I am going to address orally and somewhat
21 conceptually my intention as to revisions of the Proposed
22 Orders and some revisions of the notice to bondholders that I
23 will be asking the UCC to be point on. So I am addressing the
24 responses to the Interim Report and Recommendation of the
25 Mediation Team, which is docket entry 9365 in 3283, which I

1 refer to as the Interim Report.

2 The Court has considered carefully the Interim
3 Report, as well as the responses thereto, and the arguments
4 and statements made in court today. The Court will be making
5 certain changes to the proposed Orders that focus principally,
6 as I indicated in my earlier remarks, on matters that may be
7 particularly significant in the period between now and the
8 January Omni.

9 At the January Omni, the Court will have an
10 opportunity to consider more fully the parties' concerns in
11 the context of a report and/or additional proposed Orders from
12 the mediation team reflecting further developments and the
13 written submissions in response to the further report from the
14 mediation team. And so objections that are overruled or not
15 engaged today are, as a general matter, passed over without
16 prejudice to renewal and submissions prior to the January Omni
17 to the extent that they remain relevant.

18 The changes that I will make to the interim Orders at
19 this point are as follows: First, with respect to the GO and
20 PBA bonds oriented Order, which was Exhibit One to the Interim
21 Report, my principal concerns with that Order go to the extent
22 and clarity of notice to the bondholders.

23 The proposed notice document's caption and most of
24 its text refer to the UCC objections, but the litigation
25 schedule encompasses the Oversight Board's objections to the

1 2012 to 2014 bonds as well. And so I am directing the UCC's
2 counsel, which I understand had input into the formulation of
3 that proposed notice, to revise the notice documents, title
4 and text, to make it clear that it also covers litigation of
5 the Oversight Board objections, to include in the lists of
6 CUSIP numbers, CUSIP numbers for the 2012 to 2014 bonds, and
7 to take a further shot in this process at clarity and
8 accessibility of the information regarding the litigation to
9 come.

10 The revised notice should also flag the fact that the
11 schedule that is helpfully set forth in a table there could
12 change, and that changes will be reflected in further Court
13 Orders and notices as necessary. And I will ask the UCC to
14 file an informative motion with the revised document in
15 English and Spanish as soon as possible, so that we can keep
16 to the proposed timetable for dissemination.

17 Mr. Hein's request for revisions of that notice
18 document to include basic explanations of the litigation and
19 procedural advice is denied.

20 The mediation team's provisions, as proposed, for the
21 timing of the distribution of the notices will be maintained.
22 Distribution shortly after the holidays will reduce the chance
23 of having the mailing overlooked in the flood of holiday mail
24 or during holiday travel, and it will also facilitate the
25 Court's management of responses.

1 The Court will revise the Order itself to require
2 service of a copy of the Order on the same bondholder
3 constituencies as the narrative notice. The revised Order
4 will also direct the Oversight Board to post a copy of the
5 publication version of the notice on Prime Clerk or its own
6 website.

7 The Court suggests that the Oversight Board create a
8 website section for published litigation-related notices going
9 forward, and that steps be taken to notify bondholders that
10 such information is available on that website. And you all
11 can figure out how best to accomplish that goal, but that is
12 the goal. And that might even be something that is in process
13 enough to be mentioned in the notice that will be going out to
14 the bondholders. So that is what's going to happen with
15 respect to the GO bond and PBA Order.

16 Now, as to Exhibit Two, which is the Revenue Bonds
17 Order, as to the timing and scope of the PRIFA lift stay
18 hearings, the Court will revise the Order to permit Ambac to
19 make a motion to amend its motion on the same schedule
20 provided for new lift stay motions in terms of initiation of
21 the motion. And as to briefing, that amendment motion can be
22 briefed on the timetable for the lift stay motions, but I
23 would urge the parties to work together to propose a more
24 rapid schedule for the amendment motion to facilitate its
25 consideration in connection with the January Omni.

1 The motion to amend will be subject to Rule 15 of the
2 Federal Rules of Civil Procedure, and will be decided under
3 that standard.

4 The determination of the hearing date for the lift
5 stay motion, as it currently exists or as amended, and issues
6 as to discovery in connection with lift stay motions will be
7 addressed in connection with the January Omni.

8 The Oversight Board's suggested formula requiring a
9 meet and confer after the filing of the new lift stay motions
10 and complaints to consider the timing of lift stay motion
11 practice will be adopted in the revenue bond related Order,
12 including the preliminary hearing fallback formula.

13 To ensure that matters move along quickly, if we do
14 end up in a preliminary hearing mode, the Order will provide
15 that the movants are deemed to have waived the Bankruptcy Code
16 Section 362(e) timetable through the 45th day after the
17 preliminary hearing, if we end up going that route, and it
18 will also direct the parties to propose appropriate briefing
19 and hearing scheduling.

20 The Oversight Board's requested Section 305 language,
21 as set forth in paragraph 17 of the Oversight Board's
22 Response, will be added to the Order as a statement by the
23 Oversight Board, without prejudice to any party's position as
24 to how 305 works in this context. And to the extent there are
25 blanks for hearing dates in these Orders relating to motion

1 practice, I will fill in hearing dates that are within a month
2 of the reply brief dates as holding dates, and we may end up
3 revisiting those in January. Let's see. So that covers
4 Exhibit Two.

5 And then as to the DRA party's stipulation, I have
6 asked the DRA parties to revise the joint stipulation to point
7 to the April 22nd, 2020, April Omni date as the hearing date.
8 And I will approve the stip as so revised subject to
9 revisitation in connection with the general scheduling
10 discussions at the January Omni.

11 And then Exhibit Four, which is the amended report
12 procedures. I will direct the Oversight Board to have the
13 mediation team's amended report served on the broad bondholder
14 notice constituencies consistent with the modified service
15 requirements for the GO-PBA Order.

16 And in an effort to streamline the issues that will
17 need to be raised with the Court for the January Omnibus
18 hearing, that Proposed Order will also be modified to include
19 a requirement that the parties that have raised concerns
20 regarding the Interim Report meet and confer after the amended
21 report is filed, and before the deadline for filings in
22 response to that amended report, in an effort to streamline
23 the January proceedings and the issues that are raised in the
24 filings and response to that report.

25 And on the ERS schedule proposed modification, the

1 Court will await the filing of stipulated revisions.

2 So, Mr. Firestein.

3 MR. FIRESTEIN: Thank you, Your Honor. Good
4 afternoon. Michael Firestein of Proskauer Rose on behalf of
5 the Oversight Board.

6 I just have a process question. On Exhibit Four,
7 where you've directed -- this is the amended report procedures
8 where you've directed the Board to serve that Order. Is the
9 Court going to enter an order relative to that from which we
10 are serving, or are you asking us to add whatever the
11 component is that you've added and then submit it to the
12 Court? I just didn't quite understand what you wanted us to
13 do.

14 THE COURT: I'm going to enter it with Exhibit Four,
15 with the text that's in Exhibit Four, with a paragraph that
16 says, the Oversight Board is directed to have this Order
17 served on everybody.

18 MR. FIRESTEIN: That answers the question. Thank
19 you, Your Honor.

20 THE COURT: Thank you. All right. Thank you all.
21 The next Agenda item is the UBS Lift Stay Motion that is
22 Agenda Item V.1. Give me just one moment to get there.

23 Yes. All right. So, good afternoon.

24 MR. LOCKWOOD: Good afternoon. Paul Lockwood from
25 Skadden, Arps on behalf of UBS Financial Services of Puerto

1 Rico, Incorporated.

2 So we're here on a lift stay motion, and, Your Honor,
3 the relief that we're seeking from the Court is fairly simple.
4 It's the consented to Order, it's consented to by the
5 Oversight Board, that we submitted. That is a limited lift
6 stay. We saw a broader lift stay when we first filed our
7 relief, because we are simultaneously defending cases in this
8 court in an adversary proceeding, and also defending a case
9 that's pending in the local court, in the Commonwealth court,
10 brought on behalf of the ERS.

11 And there we asserted a counterclaim based on the
12 same contract that they're suing us on. So they're suing us
13 for breach of contract. We counterclaimed breach of the same
14 contract. We thought it would be a fairly easy ask to have
15 that stay lifted because it would be unfair to use the stay as
16 a sword and a shield.

17 We cite nine cases in our papers that support our
18 position of lifting the stay in these circumstances. No one
19 has cited any contrary case law opposing it. The reason why I
20 think we're here and the reason why it's much more complicated
21 than it should be is the ERS is really speaking through two
22 sets of lawyers who don't agree with each other. We have the
23 Oversight Board who acts on behalf of ERS and this Court. We
24 have the lawyers who are going to appear as objectors here who
25 represent the ERS in the local court.

1 Their arguments today, they clothe themselves as
2 lawyers for the beneficiaries of the ERS in terms of their
3 objection, but they actually represent the ERS in that case
4 there and their arguments that they're presenting here are on
5 behalf of the ERS. And we also have a situation where --

6 THE COURT: Okay. I'm sorry. Maybe I misread
7 things. I'm a little confused.

8 MR. LOCKWOOD: Sure.

9 THE COURT: I thought that the outstanding objection
10 was one asserted solely on behalf of individual plaintiffs,
11 and that the stipulated Order was designed to preserve any
12 potential opposition to objections to whatever the
13 counterclaims, once filed. And so frankly, what I've been
14 focusing on and thinking about this is whether there's any
15 prejudice to the individual plaintiffs in entering this Order.
16 So --

17 MR. LOCKWOOD: Let me address that, Your Honor. So
18 the lawyers who filed the objection represent both the ERS and
19 the individual plaintiffs. Here they are on this motion
20 asking or opposing it just on behalf of the individual
21 plaintiffs. We draft --

22 THE COURT: But ERS has agreed to it, otherwise
23 wearing another hat you're saying?

24 MR. LOCKWOOD: Well, the Oversight Board on behalf of
25 the ERS has agreed to it.

1 THE COURT: Yes.

2 MR. LOCKWOOD: We drafted the Order to make sure it
3 didn't affect their rights, because the counterclaims asserted
4 against the ERS, what we would be permitted to do is file the
5 claim, something we've been trying to do for seven months, and
6 then we would stay it.

7 THE COURT: Ratchet yourself down to 75 miles an
8 hour.

9 MR. LOCKWOOD: Sure.

10 THE COURT: That would be helpful. Thank you.

11 MR. LOCKWOOD: So what we would do is we would -- the
12 federal bar that prevents us from filing the claim would be
13 lifted. We would file it. It then would be reinstated,
14 because that's what the Oversight Board asked us to agree to.

15 We may be back here in January asking for it to be
16 lifted again so we could pursue more, but for purposes of
17 today, we wanted to get it on file, because an argument has
18 been made that it's untimely. So we didn't want to continue
19 not to have it on file.

20 THE COURT: Yes.

21 MR. LOCKWOOD: So we ask, let us file it, and after
22 we file it, you can put the stay back in place. And then we
23 can all negotiate for the next six weeks or whatever it is
24 until the January Omni. And we can decide whether the other
25 issues that are raised in the objection would come before Your

1 Honor or whether some further lifting of the stay is
2 appropriate.

3 None of that is before Your Honor today. All we're
4 asking for is let us get this thing on file so that we aren't
5 subject to statute of limitations arguments and the like. And
6 then once it's on file, the prosecution of that claim will
7 still be stayed and we'll negotiate.

8 We may come back in January asking for a complete
9 lifting of the stay or other relief. We'll have some
10 discussions with the parties with respect to that. And that
11 is how, I think, we'll come back to the Court. But for today,
12 we just want to lift the stay so we can file this. I don't
13 see how it affects the rights of the objectors. They're not
14 defendants to the claims. They submitted last night, in a
15 Surreply that had a revised Order -- and we do take issue with
16 the revised Order in certain respects.

17 First of all, it would have this Court direct the
18 local court, the Commonwealth court, how to proceed
19 procedurally within that court. It says that we would have to
20 move it to seek leave from the Commonwealth Court to file the
21 proposed counterclaims. We don't believe we have to do that.
22 But in any event, I don't think Your Honor needs to decide
23 that procedural question of local Puerto Rico law. We can
24 leave that for that Court.

25 THE COURT: And so by speaking in terms of filing of

1 counterclaims, you're not meaning to suggest that that would
2 be done in any way that would be inconsistent with whatever
3 procedures apply in Commonwealth court, so that if it turned
4 out the Commonwealth Court required an application to do it
5 and said it wasn't as of right, you would deal with that in
6 the Commonwealth court, correct?

7 MR. LOCKWOOD: Correct, Your Honor. We're not asking
8 you to tell the Commonwealth court how to conduct their
9 procedures. We're just asking for the federal bar that
10 prevents us from moving forward in the Commonwealth court to
11 be lifted, and then we will act consistent with the procedures
12 as required in the Commonwealth court.

13 We may disagree with the objectors as to those
14 procedures, but we can present that issue to that Court. All
15 we're asking for is the right to move forward as we've been
16 intending to since April, which is to be able to file this
17 matter, and the effect of that will be determined by that
18 Court.

19 THE COURT: Yes.

20 MR. LOCKWOOD: And then it's going to be stayed
21 immediately thereafter, because that's the deal that we struck
22 with the Oversight Board. And as I said, we may be back in
23 January asking for the right to continue with it, but that's
24 where we are at the moment.

25 THE COURT: And whenever the stay is again lifted,

1 then the plaintiffs would have the ability to assert their
2 timeliness objections and any other grounds for fighting the
3 counterclaims, correct?

4 MR. LOCKWOOD: Yes. And their objection suggests
5 that it's without merit, and all these other issues -- and
6 those are issues that that Court can deal with in due
7 course.

8 THE COURT: Yes. All right. So last night's filing
9 also included proposed language that seems to me designed to
10 restrict the ability of the Oversight Board to litigate
11 further the proposition that the automatic stay would extend
12 to the entire state court action and carve out the claims and
13 causes of action of the individual plaintiffs, and perhaps
14 shift that whole issue of stay to the Commonwealth court. Do
15 you have a position on that?

16 MR. LOCKWOOD: We disagree with that, Your Honor.
17 One, I think that in effect delegates the authority of the
18 automatic stay to the local court, which I don't think is
19 consistent with federal law. I also think the whole issue is
20 premature. The point of this Order was just to allow us to
21 get our filings in place, so any arguments about timeliness we
22 address in that respect.

23 And all these other issues, we'll get together.
24 We'll speak with the objector's counsel. We'll speak with the
25 Oversight Board. We'll try to work this out. If it doesn't,

1 we'll present papers to Your Honor that are much more fulsome
2 and orderly as to these issues, rather than dropping this kind
3 of question into a surreply the night before the hearing. But
4 I think it is a significant issue that would require
5 significant briefing, rather than just to decide it on the fly
6 on the basis of a surreply.

7 THE COURT: Thank you.

8 MR. LOCKWOOD: Thank you, Your Honor.

9 THE COURT: Good afternoon.

10 MR. VICENTE: Good afternoon, Your Honor. Harold
11 Vicente on behalf of the individual plaintiff retirees in the
12 Commonwealth action. We represent the individual retirees in
13 the state court action, in the Commonwealth court action, as
14 well as the ERS.

15 This Complaint was filed more than eight years ago by
16 individual retirees, that the ERS subsequently joined that
17 action, and it pertains to a very limited claim regarding the
18 wrongful advice that UBS provided to the ERS in the issuance
19 of the bond. It has nothing to do with the validity of the
20 bond. It has nothing to do with the contractual obligations
21 between the ERS pertaining to the issuance of the bond. It is
22 essentially a malpractice claim, which we filed and
23 interrupted the statute of limitations.

24 The Kobre & Kim report suggests that many of these
25 cases would have been prevented because of statute of

1 limitations problems. The only exception is the case that my
2 clients filed against UBS.

3 Now, the procedural status of that case, after eight
4 years of litigation, is that it is at the summary judgment
5 stage. The UBS defendants want to make issue that we are
6 raising contractual matters in that litigation and that we are
7 raising issues pertaining to the validity of the bond,
8 contrary -- similar to what the Oversight Board is alleging
9 here with respect to the bondholders. That is incorrect. And
10 casting accusations against counsel because we are assuming
11 conflicting positions is totally wrong. As a matter of fact,
12 Rule 8 of the Federal Rules of Civil Procedure allows a party
13 to make inconsistent allegations.

14 And by the way, we are not making inconsistent
15 allegations, because we are representing the ERS in one claim
16 having to do exclusively with a malpractice case for the bad
17 advice, the terribly bad advice that UBS provided to the ERS
18 prior to the issuance of the bonds. And what other lawyers in
19 these proceedings before this Court are alleging is -- has
20 nothing to do with what I, as a lawyer, am alleging. I am not
21 asking for conflicting matters.

22 Now, I believe that this Order of the -- the proposed
23 Order by UBS should be denied in its entirety for a very
24 simple reason. If the plaintiffs prevail in the state court
25 action and we are granted a remedy there, whatever remedy we

1 obtain against UBS will not have any kind of an impact upon
2 the proceedings in this PROMESA litigation. Why do I say
3 that --

4 THE COURT: But, sir, before you go on there, why
5 shouldn't the state Court, the Commonwealth Court have the
6 opportunity to decide whether it believes these counterclaims
7 should be entertained in that litigation, rather than me
8 taking a perspective on what is or isn't relevant to the state
9 court litigation?

10 All this proposed Order would do is allow UBS to go
11 to the state court, and in whatever way is procedurally
12 appropriate, say here are the counterclaims that I want to
13 assert here. And you would be able to argue to the
14 Commonwealth Court that they are outside the scope of your
15 action or too late or whatever.

16 MR. VICENTE: Your Honor, I have absolutely no
17 problem with that. As a matter of fact, I agree that the
18 Commonwealth Court is the only Court that can decide whether
19 it is going to allow an untimely filing of a counterclaim.
20 Because, by the way, the Complaint in this case, the Third
21 Amended Complaint was filed a year ago or so, months ago. And
22 UBS filed its Answer to that Complaint and did not file a
23 counterclaim.

24 When the Complaint was subsequently amended --

25 THE COURT: And so they're asking me to let them cue

1 that issue up with the Commonwealth Court without prejudice to
2 all of your arguments. So what's wrong with that?

3 MR. VICENTE: That's -- nothing's wrong with that.
4 That's why I proposed last night the amendments to the Order
5 that UBS is proposing, because I respectfully submit, Your
6 Honor, that understanding the -- in bureaucracies of this
7 community, if the Order that UBS proposes comes to the state
8 court, it would contain language that seems to suggest that
9 this Court is ordering the Court of the Commonwealth to accept
10 the proposed counterclaim. So what I proposed --

11 THE COURT: So when I --

12 MR. VICENTE: So what I proposed was, Your Honor --
13 I'm sorry. I interrupted you.

14 THE COURT: Yes. I've seen your proposed Order, and
15 you're proposing that I say that they're allowed to seek leave
16 from the Commonwealth Court to file the proposed
17 counterclaims, and then a sentence that says that "the
18 Commonwealth Court may, at its sole discretion, grant or deny
19 the filing of the counterclaim."

20 What I'm going to ask you to consider and react to
21 here is this: If I change the word "file" in the proposed
22 stipulation to "present," I think that more broadly embraces
23 the concept that they're going to offer it in the Commonwealth
24 court in accordance with the Commonwealth court's procedures.

25 And then the proposed Order already says, "without

1 waiver of and subject to any and all defenses," and that
2 preserves the plaintiff's ability to oppose that filing. So I
3 don't think that -- I think it's a little bit presumptuous of
4 me to tell the Commonwealth Court, as you would have me do,
5 that it can, at its sole discretion, do this and that. The
6 Commonwealth Court knows that.

7 MR. VICENTE: May I explain? May I explain?

8 THE COURT: Yes.

9 MR. VICENTE: Mr. Lockwood is totally unfamiliar with
10 the procedural rules in Puerto Rico. The procedural rules in
11 Puerto Rico say precisely that. And again, this is -- this
12 is, again, a mentality problem that I am envisioning. If an
13 order from this Court, the Federal Court, is issued with the
14 language that UBS is proposing, I'm afraid that the Court in
15 state court may feel that you are directing it to accept this.

16 And I want to make that language abundantly clear,
17 Your Honor. And I think that you agree with me that, for
18 reasons of comity, the Court of the Commonwealth is the only
19 one who can decide whether it is going to allow the
20 presentation of that counterclaim at this stage of the
21 proceedings.

22 And there's another factor. Another factor that I
23 added to the amendment of the Order that I proposed is that we
24 add, in the fourth paragraph, "solely with respect to the
25 ERS."

1 Why am I saying this? Because this counterclaim,
2 this counterclaim is only against the ERS. It is not against
3 the individual plaintiff beneficiaries of the ERS. They are
4 saying as much in their motions, but they're not saying it in
5 the Order.

6 And I believe, Your Honor, that this Order should be
7 pellucidly clear to the fact that if the Court were to allow,
8 the trial Court were to allow the presentation of that
9 counterclaim, it will have absolutely no effect upon my
10 clients, which are the individuals. And that is exactly why
11 the Board has indicated that it has concerns, because if you
12 take a look at the motion that the Board filed regarding --
13 the informative motion regarding reservation of rights,
14 rather, it says that it has serious concerns, because it does
15 not want to affect the claims of the individual retirees.

16 The Governor of Puerto Rico told me this herself,
17 that she was going to instruct AAFAF not to affect the rights
18 of the individual retirees, and so did some members of the
19 Board tell me that. And I have not seen a stipulation, even
20 though counsel says that they have a stipulation. I would
21 like to see a stipulation written by lawyers telling this
22 Court that there is an agreement between the Board and UBS
23 authorizing the Board, sue me, go ahead and sue me. There is
24 no such stipulation. We only have here the representation of
25 Mr. Lockwood.

1 That's why, Your Honor, I would respectfully submit
2 that -- again, this is Puerto Rico. This is not Texas. We
3 are not a state. People here think that everything that comes
4 from the United States and from this Federal Court is
5 superior. I know what I'm talking about.

6 That's why I don't like this Order, because the
7 Order, as proposed by Mr. Lockwood and UBS, seems to suggest
8 that you are instructing the trial court to accept this
9 untimely pleading. And I want to make it pellucidly clear
10 again that if you were to allow this to go forward, for the
11 presentation of that motion, the Court has -- it's a decision
12 for the Court of First Instance, the Court of the Commonwealth
13 to decide. And if you want to change that language, letting
14 the Court know that it's her decision, that's fine.

15 I don't -- I'm not -- English is not my first
16 language. Maybe my words when I say filing or presentation
17 are not the correct terms, but I want to send the right
18 message. I don't want you to send the wrong message, a
19 message that can be misinterpreted by a trial court that gets
20 an order from a Federal Court and may be confused by what it
21 is getting. So that's why we put this language in, Your
22 Honor.

23 So help me out here and, just by reasons of comity,
24 send the right message to the trial court, if the Court were
25 inclined to grant this remedy, which I believe -- and I'm

1 prepared to argue it. And perhaps this is not the right
2 moment.

3 I am prepared to argue why this should be denied in
4 its entirety.

5 THE COURT: I'm not prepared to decide that --

6 MR. VICENTE: I understand.

7 THE COURT: -- on the basis of your arguments as to
8 whether the counterclaim would have merit. I continue to be
9 uncomfortable with the additional sentence that you proposed
10 at the end of paragraph two. This is a clause that I've
11 scribbled out here. Let me read it to you so that you can
12 react to it.

13 MR. VICENTE: Sure.

14 THE COURT: And I will hear further from others, I'm
15 sure.

16 So it would say, "without waiver of and subject to
17 any and all defenses." And then I would add, comma, "and the
18 Commonwealth Court shall have sole discretion as to whether to
19 permit the filing and litigation of the counterclaim."

20 Does that --

21 MR. VICENTE: Would you repeat that again?

22 THE COURT: And the Commonwealth --

23 MR. VICENTE: Remember that English is not my first
24 language.

25 THE COURT: But you're way ahead of my Spanish, so

1 thank you for bearing with me.

2 MR. VICENTE: Thank you for that. I try.

3 THE COURT: I would add, "and the Commonwealth Court
4 shall have sole discretion as to whether to permit the filing
5 and litigation of the counterclaim."

6 MR. VICENTE: Perfect. Perfect.

7 THE COURT: All right.

8 MR. VICENTE: And one final thing. How about at
9 paragraph five, the paragraph that starts, "any such motion
10 described in paragraph four of this Order," I added, "if
11 allowed by the Commonwealth Court, shall be heard," et cetera.
12 Because again, we are reassuring the Court that this is
13 subject to its allowance of the filing of that counterclaim.

14 THE COURT: So it seemed to me that paragraph four
15 is -- paragraph five is not about the filing of the
16 counterclaim. It is about the filing of a motion in this
17 court to have the automatic stay stop the entirety of the
18 Commonwealth case, to have this Court make a determination on
19 that. And so it seems to me that your proposals for four and
20 five are inconsistent with the notion, practice and legal
21 structure that this Court would decide as to whether the
22 automatic stay applies.

23 But your understanding of what they were trying to do
24 in paragraph four is different from my reading of paragraph
25 four, and so I'm going to ask that someone who would speak for

1 the Oversight Board or ERS, you know, would explain what
2 paragraph four is about.

3 I see there's someone preparing to stand up.

4 MR. VICENTE: If I may make one final point
5 explaining why I added that?

6 THE COURT: Yes.

7 MR. VICENTE: My understanding, and perhaps I'm
8 wrong, is that we would be back here if and only if the Court,
9 in Commonwealth court, would have allowed the counterclaim to
10 be filed. If there is no counterclaim allowed by the
11 Commonwealth Court, we are not back here to discuss anything
12 having to do with a stay, right?

13 THE COURT: Well, I think paragraph four proposes to
14 allow the Oversight Board to come here and raise another
15 issue, but let me -- instead of speculating, I will ask
16 counsel to come and make her statement, if you are finished
17 for the moment?

18 MR. VICENTE: I am finished for the moment.

19 THE COURT: Okay.

20 MR. VICENTE: I would like to be heard after counsel
21 is heard, if necessary.

22 THE COURT: Yes. Thank you, Mr. Vicente.

23 Good afternoon.

24 MS. BEVILLE: Good afternoon, Your Honor. Sunni
25 Beville from Brown Rudnick on behalf of the Oversight Board,

1 acting through the Special Claims Committee.

2 There's been a lot of discussion here, so I'll just
3 try to focus on what seems to be the proposed modifications to
4 the Order. The Oversight Board does not have any objection to
5 the proposed modifications regarding presentment of the
6 counterclaims to the state court with the language that you
7 had suggested.

8 I would defer to UBS as to whether it finds that
9 language acceptable.

10 THE COURT: So both my changing of the word "filed"
11 to "present" and the additional clause that I had suggested
12 would be acceptable to the Oversight Board Special Claims
13 Committee?

14 MS. BEVILLE: Exactly.

15 THE COURT: Thank you.

16 MS. BEVILLE: Your Honor, we are simply consenting to
17 the lifting of the stay for the purpose of presenting those
18 counterclaims to the Court. We take no position how that
19 should be presented to the Court, what the language is,
20 whether the Court would permit it or not. It's simply
21 removing the imposition of the automatic stay as applies to
22 those counterclaims to allow UBS to move forward however it
23 chooses to do so in the state court and without any direction
24 to the state Court that they must accept them or not. That's
25 not a position that the Oversight Board is taking.

1 THE COURT: Thank you. Now, as to paragraph four --

2 MS. BEVILLE: So moving on to paragraph four, this
3 does contemplate, Your Honor, I believe you are correct, that
4 with the counterclaims being filed or presented in the state
5 court action, the Oversight Board just wants to make it clear
6 that we've reserved our right to file a motion to seek
7 imposition of a stay or extension of the automatic stay to the
8 state court action.

9 I'm not suggesting today that that is what we are
10 going to do. I think there is a lot of conversation that
11 needs to be had. I think you can see there's some confusion,
12 if you will, among some of the parties as to who has standing
13 for what. And so this is simply a reservation of our right in
14 this Order. Maybe it doesn't need to be stated there, it's
15 implicit. If we want to file a motion, we can file a motion
16 and have it be heard or not be heard by this Court.

17 And similarly, paragraph five is simply to modify
18 paragraph four, that if we were to file such a motion as
19 contemplated in this Order, that it would be heard at the next
20 Omnibus hearing or as otherwise may be agreed to by the
21 parties, and that would be governed by the Case Management
22 Order. It was intended to be simply an expression of what we
23 believe the Oversight Board's rights are today.

24 THE COURT: Well, do you want to take some time to
25 discuss with Mr. Lockwood and Mr. Vicente whether to exclude

1 paragraphs four and five from the proposal to the Court today,
2 and then I can hear a resumption of the motion after I deal
3 with the 926 motion? Would that be helpful to you?

4 MS. BEVILLE: Yes. We can do that, Your Honor.

5 THE COURT: Mr. Lockwood, would you agree with that?

6 MR. LOCKWOOD: I'm certainly willing to have that
7 conversation, Your Honor.

8 THE COURT: Mr. Vicente, does that work for you to
9 have that conversation?

10 MR. VICENTE: Of course, Your Honor.

11 THE COURT: All right, then. You will come back
12 after I hear the next Agenda item.

13 MS. BEVILLE: Thank you, Your Honor.

14 THE COURT: Thank you.

15 So the next Agenda item is number V.2, which is the
16 Motion to Appoint an ERS Trustee Pursuant to Section 926, the
17 renewed motion, which was initiated by docket entry number
18 9260. And I understand that, for the bondholders,
19 Mr. Cunningham is starting with 15 minutes?

20 MR. ROSENBLUM: I'm sorry. It's Mr. Rosenblum.

21 THE COURT: I'm sorry. My list had Mr. Cunningham
22 first. So Mr. Rosenblum, are you taking the 15 minutes or the
23 five minutes?

24 MR. ROSENBLUM: The 15 minutes.

25 THE COURT: Okay. Please begin.

1 MR. ROSENBLUM: Good afternoon, Your Honor. For the
2 record, Benjamin Rosenblum from Jones Day on behalf of the ERS
3 Secured Creditors Group. I'm joined by my comovants, the
4 Puerto Rico Funds, represented by Mr. Cunningham, who will be
5 doing the five minutes.

6 I'm going to talk a little bit about why we're here,
7 Sections 303 and 305, a little bit about the claims, and then
8 I'm going to turn it over to Mr. Cunningham to talk about the
9 problems associated with the Board's dual role in these cases.

10 So in terms of how we got here, the ERS borrowed
11 three billion dollars in 2008. Monies were used to invest in
12 system assets and to pay pensions. May 2017, ERS became
13 subject to these proceedings. And then in June, the following
14 month, and August of 2017, legislation was enacted that
15 transfers or purported to transfer all of the ERS assets and
16 revenues to the Commonwealth.

17 As part of that legislation, the government party's
18 position is that the Commonwealth assumed ERS' obligations to
19 pensioners. The net result, according to the government
20 parties, is that the three billion dollars of bond debt is a
21 loan at ERS, a now defunct debtor with no assets and no
22 revenues and no other material obligations.

23 As Your Honor is well aware, we have been litigating
24 issues related to these events for some time, and we've been
25 doing it alone. And by that I mean there hasn't been an

1 independent fiduciary or a debtor entity looking out for ERS,
2 as ERS, litigating along our side. And indeed, when we sought
3 ERS to pursue claims against the Commonwealth, they refused.
4 And this is a particularly extreme situation, because the
5 transfers or what occurred here happened during the pendency
6 of an insolvency proceeding, and the recipient of the
7 transfers is an undeniable insider of the debtor entity.
8 That's what brings us here today.

9 We made a motion under 926 which contemplates the
10 allowance of an avoidance action trustee in certain actions
11 where the debtor refused to bring certain avoidance claims,
12 including expressly Section 544 and 549 claims. The Oversight
13 Board and the other government parties take the position that
14 Sections 303 and 305, and I know Your Honor has a lot of
15 familiarity with those provisions --

16 THE COURT: I've heard of them.

17 MR. ROSENBLUM: -- probably more than you would care,
18 but they take the position that those provisions categorically
19 bar 926 relief. We disagree with that, and here's why.

20 So first, Section 303, one, we don't believe 303
21 operates as an independent substantive provision or even an
22 interpretive tool for any other provision of the Bankruptcy
23 Code or PROMESA. And the cases we cite as authority for that,
24 the *City of Vallejo* case, and the case is cited there in
25 Colliers for that proposition, and we also cite the cases that

1 | you can't cherry-pick provisions of the Code. So kind of
2 | point one is we don't think 303 operates to do anything on its
3 | own, let alone override 926.

4 | Point two --

5 | THE COURT: But doesn't 303, by its terms, recognize
6 | a preexisting authority and say that that preexisting
7 | sovereign authority is not disturbed by Title III?

8 | MR. ROSENBLUM: It's merely declarative in nature in
9 | that -- in the sense that it's recognizing certain sovereign
10 | rights, but it's not an interpretive tool and it's not an
11 | independent source. This is our position. It's not an
12 | independent source of substantive import. And that's what the
13 | *City of Vallejo* case said, and we believe that that's correct.

14 | Even if you did apply 303 as some sort of substantive
15 | limitation on other provisions of the Code, it wouldn't apply
16 | here because 303 deals with political or governmental powers
17 | of the Commonwealth. That's not what's going on here we can
18 | submit. The transactions that are at issue is the payment of
19 | one debtor of cash and assets, or just cash to another debtor,
20 | with the intent to pay one set of creditors and not another.
21 | We believe these are purely debt adjustment type issues.

22 | We cite the cases in our papers, and I would point to
23 | *Stockton* as an example. In that case, the Court said that the
24 | avoidance action provisions of the Bankruptcy Code simply do
25 | not implicate political or governmental powers, full stop.

1 That case actually addressed CalPERS, California's pension
2 system, and it dealt with an avoidance action relating to that
3 and about whether or not CalPERS statutory lien under
4 California law would be recognized. And the Court had no
5 problem saying that that was not a political or governmental
6 power, and that those provisions were in no way limited by
7 903.

8 I would note that there's a dearth of authority in my
9 friends' briefs regarding 903. I don't think they cite to a
10 single authority that said that 903 overrides any provision of
11 the Bankruptcy Code.

12 305. So 305, two points I want to make on 305.
13 First, 305 can act as a categorical bar on 926. The premise
14 behind 926 is the debtor has not consented. The idea is the
15 debtor is refusing to bring those claims. So to then impose a
16 consent requirement as the debtor is refusing to bring those
17 claims, but consents to the bringing of those claims, renders
18 926 surplusage or close to it.

19 And that's -- the *New York Off-Track Betting* case
20 gets a lot of play in the briefs, but that's precisely where
21 the Court landed. It expressly rejects that argument and
22 says, hey, you've rendered 926 a nullity if that were the
23 case, interpreting 904.

24 I think that dovetails with the First Circuit's
25 reasoning in the PREPA receiver case, where the Court

1 cautioned against reading 305 as eliminating another Code
2 provision precisely when you need it. And this is precisely
3 when you need 926, is where the debtor's refusing to consent,
4 refusing to take action.

5 The second point I want to make about 305 is that
6 even if you accept that 305 has a role to play here in terms
7 of the ERS property, it's not an interference of ERS' property
8 when you're dealing with an involuntary transfer, which is how
9 it's referred to in the briefing by my friends. The notion
10 that 305 can act as an interference when somebody is coming in
11 and taking the debtor's property and -- I think can't be
12 squared with the statutory language.

13 Let me talk a little bit about the underlying claims
14 here. And I think we've more than set out a colorable case
15 for them, but 549. So 549 involves the invocation of an
16 unauthorized post petition transfer of an asset. The post
17 petition transfer of an asset part I think is relatively easy.
18 Everybody acknowledges that whatever happened here happened
19 post petition. There's a little bit of noise around whether
20 or not the parties agree about the extent of the transfer, but
21 everybody agrees that at least 190 million dollars was
22 transferred, and that's significant. We also think much, much
23 more was transferred.

24 And I think the statutory provisions stand for
25 themselves. Joint Resolution 188, Section 2 says all of ERS'

1 assets are transferred. Act 106, Section 5.1 says the same
2 thing. They're unqualified -- I take that back. There is one
3 qualification in Act 106 with respect to the headquarters of
4 the Teachers Retirement System. It's obviously not applicable
5 here, but I point that out just to say they didn't mean to
6 send me your cash. Everything must go, including everything
7 that's nailed down. Everything must be liquidated and sent to
8 the Commonwealth.

9 So I think we clearly have an unauthorized -- I'm
10 sorry. We clearly have a transfer of post petition assets.
11 And then much of the briefing talks about whether or not it's
12 authorized, which I admit can be a little bit of a tricky
13 thing to think about in the context of the municipality, but
14 we think that the transfer is unauthorized for several
15 reasons. And I would point out, under Bankruptcy Rule 6001,
16 it's their burden to show why the transfer wasn't authorized.
17 And they can't meet that burden.

18 First, PROMESA doesn't authorize it anywhere.
19 PROMESA actually expressly prohibits substantive
20 consolidation, and I would submit that includes a partial
21 substantive consolidation, including taking all of the
22 debtors' assets and most of the debtors' liabilities.

23 Two, I don't think it's authorized by state law, and
24 we have a whole litigation separate and apart from this about
25 challenges to the statute. And we allege here that it's a

1 fraudulent transfer under Puerto Rico law, which I'll get to
2 in a moment.

3 And then third, I think this is the lowest hanging
4 fruit, is it's a violation of the automatic stay. I am
5 cognizant of Your Honor's decision in the GDB stay relief
6 case, and at least, however that decision was, that when the
7 debtor voluntarily uses something, it's a 363 issue. When
8 it's an involuntary use, it's a 362 issue. And here we have
9 an involuntary use of the debtors' assets.

10 So there's not much debate that it's a violation of
11 the automatic stay under 362(a). There's an argument that
12 there's an exception to the automatic stay, police and
13 regulatory power. We submit that doesn't apply. First, it's
14 not a police or regulatory power for substantially the same
15 reasons I just talked about. This is a pecuniary focused
16 action. But even more simply, 362(b)(4) only applies to an
17 action or proceeding by a governmental unit. It doesn't apply
18 to legislation. We've briefed that issue elsewhere. There's
19 cases to that effect.

20 Just a word on 544. There's a debate, and I will
21 concede that there is a split in the case law. Some cases say
22 544 applies only to prepetition transfers, and some cases say
23 it applies to both prepetition and post petitions transfers.
24 I don't think that at this stage it makes sense to weigh in on
25 a disputed issue without full briefing, but what I would say

1 is it makes no sense that Congress would prohibit prepetition
2 fraudulent transfer but would allow a post petition fraudulent
3 transfer during the pendency of an insolvency case. I think
4 whether you think of this as a 544 issue or a fraudulent
5 transfer under 549 is something that can be figured out in the
6 coming days.

7 Lastly, I just want to say a word about duplication.
8 They say, gee, there's a whole bunch of litigation. We
9 shouldn't be doing this 926 thing because you have other
10 claims. We do have other claims, but these are distinct.
11 They are different claims, different order of proofs,
12 different defenses.

13 We have a cause of action, for example, for a
14 declaratory judgment that there's been a violation of the
15 automatic stay by these legislative actions. Their defense in
16 that case, their principal defense, is you don't have standing
17 to bring that claim. That's an ERS 549 claim.

18 So here we are trying to get the ERS to bring a 549
19 claim, and their defense is, but you already have a stay
20 relief claim. It's completely circular, and the net result is
21 they're trying to beat us on standing in one place and time
22 out these claims in another instance.

23 The statute of limitations for at least certain of
24 these claims expires on February 14, 2020, so they're hoping
25 to smother these claims with the statute of limitations. I

1 submit that that's not an appropriate thing for a municipal
2 debtor to do.

3 I would also just make the point that they talk about
4 that this is duplicative with some of the actions that we're
5 taking to protect our lead and to prosecute our claims, that
6 we have a lien on certain aspects, and that there's a promise
7 by our litigant -- or our adversary that they'll give back
8 some money if we prove up we have a lien on it. Again,
9 different claims, different proofs, different defenses.

10 549 is not -- there's no requirement under 549 that
11 we prove up a lien. In fact, I would submit that whether
12 you're an unsecured creditor or a secured creditor, it is
13 simply wrong to completely hollow out a Title III debtor
14 during the pendency of its case, and there's remedies for
15 that.

16 With that, I would -- I would yield the rest of my
17 time to Mr. Cunningham.

18 THE COURT: I have a question for you, and feel free
19 to tell me that Mr. Cunningham will address it if that's the
20 case, but in invoking Chapter 7 and Chapter 11 case law
21 concerning the fiduciary duties of trustees and debtors in
22 possession, you seem to be asserting that the Oversight Board,
23 as debtor representative in these Title III cases, has
24 fiduciary duties to the creditors of territorial
25 instrumentalities.

1 Have Courts treated Chapter 9 debtors in that fashion
2 in recognizing a fiduciary duty to creditors as opposed to a
3 more holistic duty to the living political entity that is the
4 municipality or, in this case, the territory?

5 MR. ROSENBLUM: Well, I think there's a dearth of
6 case law on that, and there certainly is no case law in the
7 context of a municipal entity that's given the legislative
8 pen. This is a brand new innovation, right, the idea that the
9 sovereign can change up the rules on you during the pendency
10 of a case.

11 I would say that there is precedent to say that you
12 can't -- the state can't prefer itself in a Chapter 9. The
13 *Stockton* case talks about it. There's a case in Texas that
14 overrides the Texas state Constitution that says the state's
15 debts always get paid first.

16 The state can't dictate how this Title III proceeding
17 goes. And PROMESA overrides, you know, even state
18 constitutional provisions. And I would say just I'll defer to
19 Mr. Cunningham on the conflict point, but we believe that
20 there are fiduciary duties. But regardless of whether there
21 are fiduciary duties or whether they owe us fiduciary duties
22 or not, because they're holding our money and that's the basis
23 of a fiduciary duty, and ERS is a trust, but regardless of
24 whether there's fiduciary duties or not, they don't believe
25 that they owe us fiduciary duties.

1 And I think that's a really important point, and that
2 is what 926 is about. 926 is a creditor protection device.
3 And if they're saying we're not acting in your interest, I
4 think that's precisely why 926 is in the Code.

5 THE COURT: Thank you.

6 MR. CUNNINGHAM: Good afternoon, Your Honor.

7 THE COURT: Good afternoon.

8 MR. CUNNINGHAM: John Cunningham of White & Case on
9 behalf of the Puerto Rico Funds.

10 As Mr. Rosenblum said, I'm going to address the
11 conflict of interest issue which we raised, and it's got a lot
12 of air time in the objections. I do want to acknowledge one
13 thing on this topic, which is I recognize this is not a
14 technical requirement that's in 926. Our view is it's
15 relevant in 926.

16 Certainly I recognize that the Oversight Board is the
17 statutory representative under PROMESA for all of these
18 debtors. However, there's no question that the Oversight
19 Board's conflict of interest in wearing those multiple hats is
20 relevant to this Court's determination of whether to appoint a
21 926 trustee. It's part of the totality of circumstances that
22 this Court would consider in the exercise of Your Honor's
23 discretion, and it goes to the heart of the 926 requirement of
24 refusal by the debtor.

25 And here we think that it's obvious and it is

1 irreconcilable that the Oversight Board can't pursue an
2 avoidance action against the Commonwealth on behalf of ERS
3 when it is the statutory representative of both debtors.

4 And so just taking the background facts here, which
5 are undisputed, so ERS is an independent trust created almost
6 70 years ago, quote, "separate and apart from the Commonwealth
7 Government and its instrumentalities." That statement is
8 straight from the Board's Objection, paragraph two.

9 Both the Board and AAFAF executed a tolling
10 stipulation, so Ordered by this Court earlier this year, and
11 stipulated the following: Commencement of ERS' Title III case
12 triggered the operation of the automatic stay, quote, "to
13 protect ERS' property wherever located."

14 While ERS' automatic stay was in place and is in
15 place, and at the time the post petition legislation was
16 enacted in June of 2017, the Commonwealth, at that time, was
17 the single largest obligor of employer obligations owed to
18 ERS. And I'm reading a quote from AAFAF. "Historically,
19 Commonwealth's contributions amounted to 59 percent of
20 employer contributions ERS received." That's paragraph five
21 of AAFAF's Objection.

22 So at that time, Your Honor, at the time the post
23 petition legislation was enacted, there was a debtor-creditor
24 relationship already existing between the Commonwealth and ERS
25 that had long been established. The Commonwealth was a debtor

1 owing employer contributions to ERS, and ERS was the creditor
2 who were owed those employer contributions. But the post
3 petition legislation, Your Honor, flipped that debtor-creditor
4 relationship upside down.

5 Now the Commonwealth is the creditor and who's owed
6 all of ERS' assets. In fact, much of it has already been
7 transferred to the Commonwealth. And ERS is now the debtor
8 who's obligated by this legislation to turn over all of its
9 assets to the Commonwealth.

10 So how can that happen if the ERS automatic stay
11 enjoins any act to obtain possession of ERS' property or to
12 exercise control over ERS' property? And the Board's answer
13 is PayGo. They say that ERS' automatic stay is somehow
14 subservient to the Commonwealth's desire and also the Board's
15 desire to implement PayGo. But the Board alleges it had
16 nothing to do with PayGo, and then it refers to the post
17 petition legislation as the PayGo measures.

18 And in paragraph 43 of their Objection they state,
19 "however, the Oversight Board did not compel the PayGo
20 measures, let alone control their enactment." Yet the very
21 next statement the Board admits, the legislative assembly of
22 Puerto Rico and the Governor enacted the PayGo measures, which
23 were then presented to and approved by the Oversight Board as
24 consistent with the Certified Fiscal Plan.

25 Your Honor, that statement of that admitted approval

1 of the post petition legislation by the Board was effectively
2 signing a death warrant for ERS by the statutory
3 representative, the Oversight Board.

4 These facts, Your Honor, alone show there is an
5 irreconcilable conflict here, and it goes to the issue of why
6 the Board rejected our request to have a trustee appointed.
7 And we think this is precisely, as Mr. Rosenblum said, the one
8 avenue Congress and PROMESA made sure to leave this Court the
9 discretion to do, that Your Honor can view the totality of the
10 circumstances in this case to look at the fact that two and a
11 half years right now have gone by, and there's been a total
12 destruction of a Title III debtor, on this Court's watch, by
13 the Oversight Board. And there needs to be some
14 answerability, at least by an unconflicted fiduciary, to bring
15 that to the Court's attention and to be able to investigate
16 and file those claims.

17 As Mr. Rosenblum said, we have an expiring statute of
18 limitations. The letter Mr. Bienenstock sent us when we said
19 bring the claims, he said, well, I've already given you --
20 it's -- the paragraph says, you know, well, it's 270 days.
21 We've already agreed to that.

22 Well, that's expiring very soon here, Your Honor. In
23 February, the 544 claims will expire pursuant to the Code.
24 And in March, the 549 claims would expire. So we think a
25 limited trustee authorized under PROMESA, you know, to be

1 appointed under 926, can preserve those claims. All the
2 arguments of the 303, 305, the effect of all of this can all
3 be teed up in front of Your Honor, but at least they are
4 preserved.

5 This is an unprecedented circumstance in an already
6 unprecedented restructuring law of PROMESA. And I think what
7 they would have you do is deny our motion and have all this
8 swept under the rug, and we're going to have those deadlines
9 expire. That's the thing we're most worried about. And we
10 think it's time. It's time to drag the past out into the
11 light. It's -- two and a half years and counting with
12 expiring deadlines, Your Honor, we believe is untenable, and
13 that's why we would ask you to grant the motion.

14 THE COURT: Thank you.

15 MR. CUNNINGHAM: Thank you, Your Honor.

16 THE COURT: Ms. Dale.

17 MS. DALE: Good afternoon. Thank you, Your Honor.
18 Margaret Dale for the Oversight Board.

19 Your Honor, the bondholders are requesting permission
20 to prosecute a Complaint with two causes of action. They seek
21 basically the same relief. One is under the bankruptcy law.
22 The other is under the Puerto Rico law. The actual relief
23 that is being requested is to return to the ERS all of the
24 assets that the PayGo legislation provides to transfer to the
25 Commonwealth, and secondly, to restore the making of employer

1 contributions to the ERS to which the bondholders' liens
2 attach, they claim.

3 The reasons to deny the motion include at least the
4 four following points: First, appointment of a trustee would
5 impermissibly interfere with the Commonwealth's powers in
6 violation of PROMESA 303 and 305. Your Honor I think cut to
7 the chase in terms of the holistic approach to the municipal
8 restructuring that's being sought here, and I will come back
9 to that in one minute.

10 The second point is that the Proposed Plan of
11 Adjustment for ERS will provide the bondholders the value of
12 their collateral. In this regard, it is noteworthy that the
13 190 million dollars from the ERS is being held in escrow. So
14 if the bondholders' claim is meritorious, they are protected.

15 Third --

16 THE COURT: But they would not be protected by that
17 escrowing of the 190 million to the extent that their claim is
18 that the PayGo contributions are employer contributions in a
19 mask and they have a lien on employer contributions, correct?

20 MS. DALE: That is correct, Your Honor, and that was
21 my third point, which is that whether the PayGo fees are
22 actually employer contributions is going to be litigated, if
23 necessary, in the objections to the Proofs of Claim. And as I
24 said, it may not be necessary, because the First Circuit heard
25 argument on the 552 decision just last week, and if they

1 affirm that decision, then that claim will also go away.

2 And my last point relates to Mr. Cunningham's point
3 about some alleged conflict of interest here. There is no
4 conflict of interest here, Your Honor. They didn't raise it
5 in oral argument.

6 But the analogy that was provided in the papers
7 regarding COFINA and the Commonwealth is really not apt at
8 all. There, as you recall, the Board retained its right to
9 impose its own Plan of Adjustment and voluntarily allowed
10 creditors of the Commonwealth and COFINA to try to work things
11 out. That doesn't mean that the Board was conflicted from
12 representing both the Commonwealth and COFINA in that action.
13 And as Your Honor knows, we retained control over the entire
14 situation with the Court Ordered stipulation.

15 I just wanted to address one thing that -- also, it
16 is not our position that 305 and 303 are a per se bar to 926.
17 That's not our position. But our position is here, there is
18 no -- they haven't met their burden of showing that they're
19 trustees to be appointed under 926. The transfers are not
20 voidable and the transfers are not fraudulent. And I think
21 our papers make those points, and unless the Court has any
22 other questions, I will cede my time to Mr. Friedman.

23 THE COURT: Thank you.

24 MS. DALE: Oh, I'm sorry. Mr. Bienenstock is
25 reminding me to emphasize that the employer contribution issue

1 is raised in the bondholders' Proof of Claims against ERS, and
2 that is being litigated. As the Court is aware, we have an
3 Order in place on those issues.

4 THE COURT: Thank you.

5 MS. DALE: Thanks.

6 MR. FRIEDMAN: Good afternoon, Your Honor. Peter
7 Friedman from O'Melveny & Myers on behalf of AAFAF.

8 THE COURT: Good afternoon.

9 MR. FRIEDMAN: Let me start with the conflicts issue
10 first. I do think this pertains to one of Mr. Cunningham's
11 comments. It is time to drag things out of the dark, into the
12 light, I think he said. These issues could not have gotten
13 more light or time or exposure after the last several years,
14 including the issue of conflicts, which was extensively
15 litigated in front of Judge Dein.

16 And as we noted in our papers, she reached a
17 conclusion affirmed by this Court that I think is on point,
18 that there is a common interest between ERS and the
19 Commonwealth in dealing with pensions, in dealing with retiree
20 issues. I don't think there is a conflict.

21 I also think the conflict point misapprehends two
22 things. There may be a conflict of interest of the
23 bondholders and other people, but that's not the same as there
24 being a conflict of interest between ERS and the Commonwealth.
25 And that's what this Court and Judge Dein have found. There

1 was no conflict as it relates to PayGo.

2 I'd also note that it's a little bit alluding things
3 to say that the Oversight Board was on both sides of this
4 issue. The Commonwealth passed the relevant legislation and
5 exercised the relevant power with respect to Act 106 and Joint
6 Resolution 188, not the Oversight Board.

7 Now, they ultimately agreed with each other, but they
8 certainly -- there's one Board, one Commonwealth. And in this
9 case, I think this is precisely what Congress intended, for
10 them to act together in implementing things with respect to a
11 fiscal plan, rather than having a conflict of interest between
12 the two.

13 And again, you know, I do think that the *Richmond*
14 *Unified School District* case is germane about -- even if there
15 is a conflict of interest, the conflicts of interest in
16 Chapter 9 that are problematic, or as that Court said,
17 impermissible conflicts of interest, and I don't see under any
18 law, whether it be PROMESA or Puerto Rico law, that there's
19 any impermissible conflict of interest between ERS and the
20 Commonwealth in how they've approached all of these issues.

21 On the substance of 303, I think Ms. Dale is correct.
22 I don't think that 303 creates a categorical bar to ever
23 exercising 926 against the state. I just think it imposes one
24 in these circumstances. 303 is clear on its face that nothing
25 in the -- in Title III impairs a state's exercise of certain

1 kinds of powers. I don't think that can be treated as
2 surplusage.

3 And to the extent that *Vallejo* suggests that it has
4 sort of no force or merit, that would render what the OTB
5 Court referred to as the constitutional moorings of Chapter 9
6 as surplusage -- I don't think that's an analytically sound
7 way to look at what is such an essential facet of Chapter 9
8 and PROMESA.

9 I also think, to be honest, that to suggest that
10 simply by filing a Title III, the Commonwealth has -- or
11 permitting ERS to file a Title III, the Commonwealth has
12 waived its powers, is inconsistent with the First Circuit's
13 analysis in *PREPA*, which said you certainly couldn't look at
14 305 that way. The parties tried to argue, by filing 305, you
15 waived all the protections -- I'm sorry, by filing a Chapter 9
16 or a Title III, you waived all the protections of 305, and
17 certainly the First Circuit rejected that and took a different
18 opinion of the two California District Courts that had looked
19 at the issue that way. And I submit, looking at -- saying
20 that a filing or permitting a filing waives the protections of
21 Title III would be equally inconsistent with the plain
22 language of that statute and the protections it's intended to
23 provide.

24 Now, the other issue in the case that the bondholders
25 cited in their Reply papers I think misconstrues the point

1 actually of *Stockton*, *Vallejo* and *Detroit*, which is that in
2 each one of those, the limitation that was struck down by the
3 Court was an attempt by a state to impose through statute a
4 substantive limitation on the Bankruptcy Court or the use of
5 the Bankruptcy Code.

6 Here, Puerto Rico did not put into the ERS statute
7 that said -- and no -- and ERS may not pursue that, a
8 fraudulent transfer claim here. Our argument is the
9 limitation inheres in the Bankruptcy Code, and PROMESA, not
10 some external statute imposed by Puerto Rico attempting to
11 cherry-pick or limit application. We just think that inheres
12 in the nature of Section 303. So I think for that reason, the
13 relevant cases are distinguishable.

14 Another point that was made is with respect to 362
15 and the automatic stay. We strongly contest the automatic
16 stay can trump 303 in this context either. We briefed that
17 extensively, but I just want to be clear that that's why we
18 don't think the automatic stay applies. Just as we think
19 540 -- 926 or 544 or 548 cannot overrule 303, we equally
20 believe 362 cannot overrule 303.

21 And at least my reading of the Court's Opinion with
22 respect to *GDB* is that the Court at least believes that's
23 certainly a colorable argument and may have, at least in part,
24 adopted that analysis. But I don't want to overstate what the
25 Court was thinking, because it was not explicit in the Court's

1 determination.

2 There was language as to the structure of PROMESA and
3 Chapter 9 having respect for state control over its
4 instrumentalities. I wouldn't presume the Court was going so
5 far as to say that 303 blocked the application of 362, but
6 certainly our position is it does and it should.

7 So then the question becomes, is it simply a kind of
8 financial transaction that 303 doesn't protect? And I think
9 there's sort of two issues there. One is I'm actually not
10 sure that the financial transaction limitation is really the
11 right kind. When you look at 303, 303 really gets to
12 overriding only one kind of very specific statute, which is a
13 moratorium act. And I'm sure we'll have more to say about
14 what a moratorium act really is, but it doesn't seem to
15 necessarily limit a government's power in other respects in
16 terms of financial relationships.

17 But even if there is a financial relationship bar,
18 Joint Resolution 188 and Act 106 are not simply financial
19 transactions. They are a structuring of Puerto Rico's pension
20 system, which is something that -- and a modification of the
21 administration of the pension system. It, you know, simply
22 put, in addition to having financial components, removes
23 certain governmental functions from ERS and moves them to
24 AAFAF and the Commonwealth. That's a governmental exercise of
25 power.

1 And I note that 303 isn't just limited to exercises
2 of government and political control or power, but it includes
3 expenditures therefore. So it's clear that you can't say,
4 well, if it has a monetary component, it falls outside the
5 structure and permissible reach of 303. And our brief makes
6 clear what the other public policy and governmental powers in
7 terms of protecting Puerto Rico's retirees involved here are.
8 And for that reason, we think it's inappropriate to exercise
9 926 in this situation.

10 I did want to make a couple of -- one other point,
11 because I do think 549 is really important here. 549, as -- I
12 agree with Mr. Rosenblum, it is murky. It is a little
13 complicated and confusing as to how it gets dealt with here,
14 but I think that ambiguity certainly heavily tilts in our
15 favor.

16 What's authorized? Well, an authorized transfer in
17 the context of a Title III or municipal case, something that
18 has been approved by the Oversight Board for sure, and
19 something that is authorized by Puerto Rico statute. They
20 want to presume the invalidity of the statute in order to get
21 to the issue of unauthorized, and I don't think our view would
22 make 549 a dead letter.

23 I actually have an example of what could be a 549
24 claim in a Title III. All parties have submitted to the
25 Court, and the Oversight Board, I think, consented under 305

1 to having professional fees subject to Court Orders. If, for
2 example, the Commonwealth paid a professional out of the
3 strictures of that Order, that could be an unauthorized
4 transfer, because the Oversight Board has said that transfers
5 must be made in accordance with a Court Order.

6 So my view of 549 is that it's not a dead letter,
7 because I've just postulated one way in which a Court could
8 clearly use it in a Chapter 9 or Title III case. So I think
9 all these sections can be harmonized together in a way that
10 doesn't permit a 926 trustee to be appointed to gut one of the
11 most significant legislative accomplishments that Puerto Rico
12 has enacted since the onset of these Title III cases.

13 Thank you, Your Honor.

14 THE COURT: Thank you, Mr. Friedman.

15 Mr. Raiford.

16 Mr. RAIFORD: Good afternoon, Your Honor. Landon
17 Raiford from Jenner & Block for the Retiree Committee.

18 I think, to the bondholders' credit, they are very
19 clear about what they hope to achieve. In their motion, in
20 page four, they state their belief that 549(a) and 544(b),
21 quote, allow ERS to invalidate the Commonwealth's legislation
22 and recover ERS' transfer of property, end quote.

23 I think one way to resolve the motion is to ask
24 ourselves, can that proposition plausibly be true, and the
25 answer is no. To be sure, the Bankruptcy Code is a powerful

1 tool, but it's not all powerful. And I'm not aware of any
2 case law which suggests that the Code's avoidance action
3 provisions can be used to invalidate or appeal a duly enacted
4 law.

5 In a very real sense, bondholders want to proceed
6 with the complaint that seeks to extend the Code's avoidance
7 action powers beyond anything any Court has found possible up
8 until this point in time. Their position, if accepted, would
9 severely curtail the Commonwealth's ability to manage its
10 pension system. And if these Code provisions can do that,
11 there's really no limit as to what they can undue. Common
12 sense tells us that can't be true, and the opposition briefs
13 lay out in detail why it can't be true and why the motion
14 should be denied.

15 The Retiree Committee takes this position and objects
16 to the motion fully aware of its unique interest here. To the
17 extent there is something to collect by ERS against the
18 Commonwealth, and again, we don't think there is, at least
19 some of those funds could belong to our members or could be
20 used to pay pensions. But the Retiree Committee also
21 understands it is not in the best interest of ERS or its
22 constituents to pursue litigation just for the sake of
23 litigation. Nor is it in the best interest of ERS or its
24 constituents for the bondholders to pursue what generously
25 might be classified as novel claims on ERS' dime and for the

1 benefit of the bondholders who view this as a way to put
2 litigation pressure on the Board by opening up yet another
3 front in their endless war over the PayGo legislation.

4 As we gather here today, the Court already has dozens
5 of pages supporting our position. And you've heard from
6 others. I won't belabor those points. What I would like to
7 do with my remaining time is address a few points the
8 bondholders raise in their Reply Brief.

9 First, on their first claim, the 549(a) claim, the
10 oppositions note that one problem with that claim is when it
11 comes to seeking to invalidate the legislation, there are no
12 transfers to avoid. All it did was affect property of other
13 entities, money and funds that never belonged to ERS.

14 Now, the bondholders don't actually provide any
15 rebuttal to that point. In fact, in their Reply Brief, they
16 punt on the issue and simply say that this can be litigated at
17 a later stage, but that's incorrect. As one Court put it,
18 Courts should be loathe to appoint a trustee, given the
19 Court's limited powers in a municipal case.

20 Consequently, bondholders are required to make, in
21 the words of Collier, a, quote, substantial showing, both
22 factual and legal, of the likelihood of the existence of
23 avoidable transfer. Bondholders don't even attempt to do that
24 and, therefore, fail to meet their burden.

25 We've also heard a little bit today about this 190

1 million transfer from ERS to the Commonwealth, but the
2 bondholders provide no justification for why even if such a
3 claim did exist, it would not be futile. The Court is
4 presented with two possible scenarios, and I think you went
5 over this a little bit with Ms. Dale. In scenario one, the
6 bondholders prevail on their lien scope argument. If so, the
7 Court can always hold the Board to its agreement to return
8 these funds to the bondholders. We don't need yet another
9 lawsuit to just get to the exact same place.

10 The second scenario, the one we obviously think is
11 more likely, the bondholders do not prevail. If so, the funds
12 stay with the Commonwealth anyway. So why would we proceed
13 with an adversary proceeding before that determination is
14 made?

15 On their second claim, the 544(b) claim, it fares no
16 better. Our bondholder friends do note that there is a split
17 in authority. Well, that's true, but probably only in the
18 most technical sense. The clear weight of the case law,
19 including the one reported decision in the First Circuit,
20 holds that 544(b) only applies to prepetition transfers. In
21 fact, the legislative history of 549 also supports that
22 conclusion, because it states that 549 permits the trustee to
23 avoid transfers of property that occur after the commencement
24 of the case. In other words, 549 was necessary to allow the
25 avoidance of post petition transfers because the other

1 avoidance action provisions don't apply.

2 I think the best case that addresses this is the
3 *Kenny G* case. And I bring that up not only because I can
4 mention *Kenny G*, that easy listening musical genius, in open
5 court, but also because it actually does go into detail over
6 the numerous reasons why the only plausible interpretation of
7 544(b) is that it applies solely to prepetition transfers.

8 In rebuttal, the bondholders point us to two cases.
9 One, *Seminole Walls*, doesn't even address the issue. The
10 second, a case out of Louisiana, is a 544(a) case, and it,
11 too, provides no substantive analysis. The Court should treat
12 these two cases for what they are, incorrect outliers that cut
13 against the well-established rule that 544(b) only applies to
14 prepetition transfers.

15 And finally, even if we were to assume and look at
16 the merits of the 544(b) claim, it would still fail. And this
17 gets a little murky, because the bondholders base their
18 fraudulent transfer claim on 31 L.P.R.A. 3028, which allows a
19 creditor to impugn the acts which the debtor may have
20 performed in fraud of their right. But then they argue that
21 intent, which they implicitly concede they cannot show, is
22 irrelevant under Puerto Rico law, because courts actually
23 applied the standard of another statute, 31 L.P.R.A. 3492 in
24 fraudulent transfer actions.

25 And the Puerto Rico Supreme Court has held that that

1 provision, which on its face applies to the rescission of
2 contracts, quote, does not require evidence of the purpose or
3 aim of the debtor to harm his creditors. It suffices to show
4 that he knew about the result produced.

5 As a threshold matter, it is highly questionable that
6 3492 globally applies in all fraudulent transfer actions.
7 Every case the bondholders cite is a contract case, and
8 there's no compelling logic why a contract rescission statute
9 will supply the test in a case like this one where no contract
10 is at issue. But even if the bondholders are right and 3492
11 did apply, it doesn't help them.

12 The test of 3492 still requires an affirmative
13 voluntary act. All the standard does is articulate the
14 traditional principle that when you act intentionally, you
15 intend the natural consequences of your action. If the
16 natural consequence of an intentional act would be to defraud
17 a creditor, the law presumed you acted with that intent. But
18 as the bondholders themselves note in their Reply Brief and
19 again today, every transfer they seek to avoid was
20 involuntary. You cannot stretch the definition of fraud
21 beyond recognition and hold that someone can commit fraud
22 through a wholly involuntary action.

23 For all the reasons listed in the opposition papers
24 and discussed today, the bondholders have not asserted any
25 colorable claim, avoidance action claim that would justify the

1 appointment of a trustee and the motion should be denied.

2 Thank you.

3 THE COURT: Thank you.

4 Mr. Rosenblum.

5 MR. ROSENBLUM: Again, for the record, Ben Rosenblum
6 of Jones Day on behalf of the ERS Secured Creditors.

7 I'm going to be a little disjointed, but with respect
8 to the Oversight Board's contentions, I heard very little that
9 was not already in their brief. And the points that they did
10 make, I think did not meet the argument. Most of the points
11 related to whether or not the bondholders were successful in
12 their assertions regarding the lien and scope of the lien, but
13 that's besides the point for purposes of Section 549 and the
14 causes of action we're seeking appointment of a trustee for
15 here today.

16 So the fact that whatever their Plan of Adjustment
17 says, whatever happens in the other litigation is all
18 irrelevant to that. Similarly, the litigation about whether
19 or not PayGo fees are the same as employer contributions,
20 which we are prosecuting that case elsewhere, is also not
21 material to the 549 claim. It's black letter law under -- a
22 transfer in the Bankruptcy Code is a disposition of an asset,
23 including the elimination of an asset. A release is a perfect
24 example. Release is a transfer under the Bankruptcy Code.
25 What they have here is a release of ERS' rights to receive

1 revenue.

2 There was also mention about how COFINA's distinct,
3 how there was no concession that they couldn't represent both
4 the Commonwealth and COFINA in a lawsuit. I would suggest
5 that it's an elementary principle, you can't be both plaintiff
6 and defendant, and that's precisely the problem here.

7 Precisely the problem is the mentality that the Oversight
8 Board believes that it can be both A and B, and that's wrong.

9 It's not a problem that they're appointed a
10 representative for all debtors. That happens in a lot of
11 cases. Trustees are appointed by Courts for multiple debtors.
12 Debtors in possession serve for multiple debtors. But when it
13 comes time to litigate an interdebtor dispute, there's some
14 kind of special committee. There's some kind of resolution
15 mechanism to avoid that conflict, to avoid the absurdity of A
16 and B being the same party.

17 You can't be the judge in your own case. It's a
18 fundamental principle of law. And that's what they did in
19 COFINA. They created a structure to go litigate that where
20 they weren't involved.

21 I will also just speak briefly about the 303 point.
22 I said in my initial remarks that they had no authority, and
23 you didn't hear them come up and provide any or even try to
24 rebut that statement. There is no 303 case that they can
25 point to to support their position.

1 Mr. Friedman pointed out that -- their contention
2 that it's a governmental or political power. No authority
3 cited for that proposition. This is purely a financial
4 transaction. And, in fact, Mr. Friedman incorrectly said that
5 the Commonwealth of Puerto Rico enacted 188 and not the Board.
6 That's demonstrably false. The Board did it pursuant to its
7 powers under PROMESA, under it's budgetary provisions. The
8 Governor subsequently signed it after the Board enacted it
9 into law. And just as a sequencing matter, it was the budget
10 starting on July 1, 2017, forward. The Governor didn't sign
11 it until afterwards. It was effective before the Governor
12 signed it.

13 I hesitate to go too far down this path, because Your
14 Honor may be aware, we have a Takings claim against the United
15 States Government, and this is an important issue in that case
16 about exactly the Oversight Board's role in this legislation.

17 I point out that Act 106 also, in its preamble, says
18 that it's doing this because it's been directed to do this
19 under the Fiscal Plan. You don't need to reach those issues
20 today. I would just point out that these are fiscal measures
21 that are happening.

22 There was a citation to the *Richmond* case, which is
23 discussed in the papers. I think it's beside the point. It
24 goes to the conflicts issue, if anything, but the whole point
25 is they're refusing to bring these claims. And even the

1 | *Richmond* case, when it goes through and catalogs the various
2 | deferences to state law, it carves out 926, precisely the
3 | relief here that we're seeking.

4 | I would also note Mr. Friedman's acknowledgment that
5 | this is a murky area of the law. Well, I think all the more
6 | reason that we've cited a colorable claim here and that these
7 | cases should be allowed to proceed on full briefing rather
8 | than having them snuffed out by the application of a statute
9 | of limitations.

10 | With respect to the Retirees' points, I don't think
11 | it's the appropriate forum to litigate completely the merits
12 | of all of these claims. I think we've more than set out that
13 | they're colorable. I'm not going to engage in the argument
14 | that ERS had no property. Of course it had property. The
15 | issue of whether or not ERS had a property right in employer
16 | contributions is the subject of other litigation. ERS
17 | clearly, by the Retiree Committee's own acknowledgment,
18 | transferred assets to the Commonwealth post petition. The
19 | extent of those asset transfers is yet to be fully discovered,
20 | but again, the statutes speak for themselves.

21 | I would also note that in the Retiree Committee's
22 | contentions around Puerto Rico law, they don't cite a single
23 | Puerto Rico authority or case. It's their reading of the
24 | statute. We come back with Puerto Rico authority on why the
25 | fraudulent transfer claim is an appropriate claim and why it's

1 a constructive fraud statute. They have nothing in response.

2 I'd also note that the idea that it's involuntary so
3 it can't be a fraudulent transfer, that's fine. We're allowed
4 to plead in the alternative at this stage, and it's precisely
5 because our adversaries may shift their positions down the
6 road.

7 With that, I would -- I'm happy to answer any
8 questions that the Court has.

9 THE COURT: No. I have no further questions. Thank
10 you.

11 MR. ROSENBLUM: Thank you very much.

12 THE COURT: I will take this matter under advisement
13 and issue my decision as promptly as possible.

14 MR. ROSENBLUM: Thank you, Your Honor.

15 MR. DESPINS: Your Honor, could we have a 45 second
16 reservation of rights on this issue, if I may be heard?

17 THE COURT: Yes. Mr. Despins is coming to the podium
18 to make a reservation of rights.

19 MR. DESPINS: Good afternoon, Your Honor. Luc
20 Despins for the Official Committee. As you know, we are the
21 Official Committee for the Commonwealth and for ERS, so we're
22 staying out of the merits of this.

23 The reservation of rights is just as follows. We
24 don't want the bondholders later to argue if -- and we're not
25 suggesting that, but if Your Honor were to grant the relief,

1 and if there were litigation brought, and if the litigation
2 were successful, I don't want my silence here to imply that we
3 agree that they would get the money on the ERS side because
4 there are tons of unsecured creditors on the ERS side. These
5 guys are nonrecourse creditors. Let's not forget that.

6 So I'm not saying that the Court has to decide that.
7 I just want to make sure my silence here today would not be,
8 under those circumstances, an acknowledgment that they are
9 entitled to get that money if it ever came back to that side
10 of the ledger.

11 Thank you, Your Honor.

12 THE COURT: Thank you.

13 MR. CUNNINGHAM: Your Honor, just briefly. John
14 Cunningham.

15 Your Honor, six months ago I sought to disband the
16 Committee. As Your Honor knows, you denied that because it
17 wasn't a point in time where an actual conflict Your Honor
18 thought existed, and that's why -- I think is the reason he's
19 not objecting here today. So we take that for its worth. But
20 the point about where the money's going, that's the whole
21 point of our motion. We want the money back in ERS.

22 We didn't ask how it would be directed. That's the
23 whole point of 926, is to recover money into the estate.
24 We're not taking a position in this motion on where that money
25 goes. We want to bring it into the estate.

1 Thank you.

2 THE COURT: Thank you.

3 MR. CUNNINGHAM: Or to the debtor. Thanks.

4 THE COURT: All right. And so are the UBS parties
5 back and ready to report?

6 MS. BEVILLE: Thank you, Your Honor.

7 THE COURT: Good afternoon, Ms. Beville.

8 MS. BEVILLE: Sunni Beville from Brown Rudnick on
9 behalf of the Special Claims Committee.

10 I want to report where we are, and then I'll turn the
11 podium over to Mr. Lockwood and Mr. Vicente. I can tell you
12 what we have agreed to and what remains open for discussion.
13 With respect to paragraph two, Your Honor, of the proposed
14 Order --

15 THE COURT: Yes.

16 MS. BEVILLE: -- we would -- we all would agree that
17 the first sentence would read, "pursuant to Bankruptcy Code
18 Section 362, made applicable by PROMESA, Section 301(a), the
19 automatic stay is hereby lifted solely" -- we would insert the
20 word "solely" -- "to allow UBS Financial," and the rest of
21 that would remain.

22 Your Honor, the Special Claims Committee agrees to
23 the addition of a proviso at the end of that paragraph,
24 similar to the language that you had described to the court
25 earlier -- described to the parties earlier. There does

1 remain dispute as to what precisely that language should say
2 at the end of paragraph two.

3 THE COURT: So would you want an opportunity to
4 reformulate if I --

5 MS. BEVILLE: Yeah.

6 THE COURT: -- grant the motion --

7 MS. BEVILLE: Yes. I think you're going to hear
8 from Mr. Vicente and Mr. Lockwood, there is a very precise
9 issue as to leaving open to the Commonwealth what the
10 procedural mechanism is. We're deciding whether or not to
11 permit the counterclaims to be presented by all or heard at
12 the Commonwealth level, so there's some discussion on that one
13 point.

14 THE COURT: And so does that go to both the final
15 clause and to the word in the middle of that paragraph where I
16 had proposed to change the word "filed" to "present"?

17 MS. BEVILLE: To "present," yes, Your Honor. We all
18 accept that.

19 THE COURT: You do accept that?

20 MS. BEVILLE: We do accept that.

21 THE COURT: Okay. But there is a further nuance
22 issue as to the sentence regarding the powers of the
23 Commonwealth Court as to what happens to the counterclaim
24 there.

25 MS. BEVILLE: Yes, Your Honor. Yes. And then we

1 have also agreed to strike paragraphs four and five from the
2 Order.

3 THE COURT: Thank you.

4 MS. BEVILLE: Thank you.

5 MR. LOCKWOOD: Your Honor, it's Paul Lockwood again
6 on behalf of UBS Financial Services of Puerto Rico.

7 As was just described by counsel for the Oversight
8 Committee, we agree to present -- in paragraph two, we agree
9 to strike four and five. I think six really covers four and
10 five.

11 And the final concern we have is I agree wholly with
12 Mr. Vicente with respect to comity, and that this Court
13 shouldn't be weighing in on the procedural dispute that we're
14 going to have in the local court. With respect to -- and just
15 to lay it out there, the dispute we have is whether we have to
16 seek permission to file a counterclaim or whether we can just
17 file it as a matter of right pursuant to local procedure. And
18 I don't think Your Honor should weigh in on that one way or
19 the other.

20 The concern that we have is that the proviso that
21 Your Honor dictated earlier states that in -- the Commonwealth
22 Court shall have the sole discretion as to whether to permit
23 the filing and litigation of the counterclaim. And to me, I
24 think that Mr. Vicente is going to take that language into
25 that court and say the Federal Court has told you to decide

1 | whether to permit the filing of the counterclaim. We think we
2 | have the ability to present that counterclaim as a matter of
3 | right.

4 | So what I would suggest, as an alternative language,
5 | Your Honor, borrowing from your phrase, "the Commonwealth
6 | Court shall have the sole discretion as to the procedural
7 | requirements for presenting the counterclaim in the
8 | Commonwealth court." And that way this Court doesn't suggest
9 | that either way, whether it gets filed as a matter of right or
10 | whether we're required to seek leave and permission to file
11 | it. We would prefer that the language be as neutral as
12 | possible in the Order for the reasons that Mr. Vicente has
13 | already stated, which is that this Court should allow that
14 | Court to decide its own rules.

15 | Thank you, Your Honor.

16 | THE COURT: Thank you. Just don't sit down yet,
17 | because I just need to think about that for a minute. And so
18 | would you keep the remainder of my proposed insert as to the
19 | Commonwealth Court also having discretion as to whether to
20 | permit litigation of the counterclaim, or have you all agreed
21 | that that's not necessary?

22 | MR. LOCKWOOD: I don't think it's necessary. We
23 | haven't agreed, but I don't think it's necessary because I
24 | think that that's clearly implicit. But I don't oppose
25 | addressing it expressly. We could add another phrase saying,

1 "and the litigation of the counterclaim in that court." That
2 would be fine for me.

3 THE COURT: So give me just one moment before you sit
4 down. Would you repeat what you -- do you remember what you
5 just said as to the litigation end of it? And repeat that to
6 me.

7 MR. LOCKWOOD: Yes.

8 THE COURT: Actually, I'm sorry. I have the
9 transcript here. So what you said was we could add another
10 phrase saying, "and the litigation of the counterclaim in that
11 court."

12 So if it says, "and the Commonwealth Court shall have
13 sole discretion as to any procedural requirements for
14 presenting the counterclaims and as to the litigation of the
15 counterclaim in that court," does that do it for you?

16 MR. LOCKWOOD: That does it for us, Your Honor.

17 THE COURT: All right.

18 MR. LOCKWOOD: As I stated, Your Honor, that's
19 designed to be as neutral as possible. If the counsel for the
20 objectors believes there's even more neutral language than
21 that, I'd be willing to undertake it. But I think they wanted
22 the phrase, "permit the filing," and our concern is that that
23 suggests that permission of a filing is required.

24 THE COURT: All right. Thank you.

25 I'll ask Mr. Vicente to come up and tell me whether

1 | this works for him.

2 | MR. VICENTE: Thank you once again, Your Honor.

3 | THE COURT: Good afternoon.

4 | MR. VICENTE: Harold Vicente for the individual
5 | retirees.

6 | I have a preference. I preferred your original
7 | language. However, in an attempt to meet counsel halfway and
8 | resolve this matter immediately, the only addition I would ask
9 | that be incorporated into the language that you just read is,
10 | "if allowed".

11 | THE COURT: So you would say "as to any" --
12 | "discretion as to any requirements for presenting the
13 | counterclaims and as to the litigation of the counterclaim,
14 | comma, if allowed" --

15 | MR. VICENTE: If allowed.

16 | THE COURT: -- "comma, in that court"?

17 | MR. VICENTE: Yes.

18 | THE COURT: Okay. Mr. Lockwood, can you live with
19 | that?

20 | MR. LOCKWOOD: Your Honor, excuse me, it's Paul
21 | Lockwood again.

22 | I think it's more confusing than it is helpful to add
23 | that, because I think it does create this implication that the
24 | Court has to make a preliminary ruling, which we don't think
25 | it does. And that would be -- our preference is not to

1 include "if allowed" for that reason.

2 THE COURT: How about, and as to -- let's see. Any
3 procedural requirements for presenting the counterclaim, and
4 as to any litigation of the counterclaim in that court; would
5 that work for you?

6 MR. LOCKWOOD: That would work for me, Your Honor.

7 THE COURT: Mr. Vicente, would that work for you?

8 MR. VICENTE: I prefer the original language, but
9 let's put an end to it. I'll accept it.

10 THE COURT: Thank you.

11 MR. LOCKWOOD: Thank you, Your Honor.

12 THE COURT: All right. And so would you,
13 Mr. Lockwood, reformulate your Proposed Order, run it by Mr.
14 Vicente to make sure that you're agreed on the agreed language
15 and the excision of the paragraphs that are coming out, and
16 then file it with a -- I guess file it as an informative
17 motion as to the agreed formulation of the Order, rather than
18 as an Order -- a motion on presentment, because we've dealt
19 with it here.

20 MR. VICENTE: Fine with me.

21 MR. LOCKWOOD: We will undertake that, Your Honor.

22 THE COURT: Thank you very much. Thank you both.

23 MR. LOCKWOOD: Your Honor, may we be excused from the
24 rest of the hearing then?

25 THE COURT: Yes, you may. Safe travels if you're

1 traveling.

2 MR. VICENTE: Thank you very much, Your Honor. It's
3 a privilege to be here for the first time before you. I ask
4 to be excused.

5 THE COURT: Thank you. It's very good to see you.

6 MR. VICENTE: Good afternoon.

7 THE COURT: Have a good day.

8 I believe the final Agenda item is the Contested
9 Claim Objections that are Agenda Item V.4 through 11.
10 Ms. Stafford.

11 MS. STAFFORD: Good afternoon, Your Honor. Laura
12 Stafford of Proskauer Rose on behalf of the Oversight Board.

13 The first of the Contested Claim Objections is the
14 75th Omnibus Objection, and for the record, that is ECF number
15 8960. This Objection seeks to disallow Proofs of Claim that
16 assert bonds as to which HTA is no longer liable because the
17 bonds the claimants purport to hold have already been refunded
18 either through redemption or defeasance.

19 Only one Response to this Objection was filed by MGIC
20 Indemnity Corporation. That's ECF number 9326, Proof of Claim
21 number 16608 by MGIC Indemnity Corporation. And I'm pleased
22 to report that I've, in the last 24 hours, had a number of
23 conversations with counsel for MGIC, and I believe we've
24 resolved any remaining issues as to this objection.

25 I think we both have -- we've come to the agreement

1 that in light of the fact that the debtor is currently not
2 liable for payment on the bonds asserted through the claim,
3 that we're comfortable -- that counsel is comfortable allowing
4 the objection to move forward and the claim to be disallowed.
5 And I will let her correct me if I said anything wrong.

6 THE COURT: Thank you. Good afternoon.

7 MS. DIAZ MAYORAL: Good afternoon. Monique Diaz
8 Mayoral for MGIC.

9 Yes, we have had various conversations. What sister
10 counsel has said is correct. We have different positions as
11 to debtor's liability before -- in the past, before payment,
12 but after that, we both agree that after the payment, debtor
13 is not liable. So in order to not use the Court's valuable
14 time with a controversy over the debtor's liability before the
15 payment, we would not object to the claim being disallowed at
16 this time, because at this time, debtor is not liable.

17 That way both parties can preserve their positions as
18 to said controversy before payment and the effect is the same
19 -- sorry. So in order not to use this Court's valuable time
20 with the controversy over debtors' liability before the
21 payment, we would not object to the claim being disallowed at
22 this time, because at this time, the debtor is not liable.

23 That way both parties can preserve their positions as
24 to said controversy before payment and the effect is the same.
25 The claim is removed from the Claims Registry at this time.

1 THE COURT: Thank you, Ms. Diaz Mayoral. It's good
2 to see you here in court.

3 MS. DIAZ MAYORAL: Thank you.

4 MS. STAFFORD: Thank you, Your Honor. And so in
5 light of that, given that there have been no further
6 responses, we'd request the Court grant the objection and
7 disallow the claim subject to it.

8 THE COURT: The objection is sustained and the
9 subject claims are disallowed. And the Order will be entered.

10 Do you have to do a revised Proposed Order or no?

11 MS. STAFFORD: I don't believe so, but we can confirm
12 that and let the Court know.

13 THE COURT: Yes. So just confirm that your Exhibit A
14 to the 75th Omnibus Order is sufficiently comprehensive and
15 accurate, and confirm that to us. And if not, give us an
16 accurate one.

17 MS. STAFFORD: We would be glad to do so.

18 THE COURT: Thank you very much.

19 MS. STAFFORD: The next Contested Claims Objection is
20 the 77th Omnibus Objection filed by the Commonwealth and ERS.
21 For the record, it's ECF number 8990. This objection seeks to
22 disallow a number of Proofs of Claim that assert liabilities
23 associated with entities that are not Title III debtors, but
24 do not comply with applicable Rules by not providing a basis
25 for purporting to assert a claim against the Commonwealth or

1 ERS.

2 Only one Response was filed, and that is ECF number
3 9132, for the record. Upon review of that Response, we've
4 withdrawn our objection to that claim and we've reached out to
5 that claimant in order to better understand the nature and
6 basis of that claim, so we can decide how best to move
7 forward.

8 In light of that, and no further responses having
9 been received, we'd request the Court grant the objection and
10 disallow those claims.

11 THE COURT: And so does your Exhibit A filed at 9429
12 reflect the proper universe of disallowed claims?

13 MS. STAFFORD: It does, Your Honor.

14 THE COURT: The objection is sustained as to the
15 claims listed in Exhibit A to docket entry 9429, which will be
16 entered.

17 MS. STAFFORD: Thank you, Your Honor.

18 THE COURT: Thank you.

19 MS. STAFFORD: And with respect to the remaining
20 contested claim objections, each of these are ones as to which
21 the Court had already entered an order adjourning remaining
22 responses -- or I believe there's one response that the Court
23 did not adjourn, but we filed a Notice of Adjournment with
24 respect to that claimant's claim, so I don't believe there's
25 any additional responses that need to be addressed today.

1 However, with respect to each of those objections, we
2 do have additional supplemental mailings that we received and
3 additional claims that we would like adjourned from the
4 remaining contested objections.

5 THE COURT: And so does that mean you don't want me
6 to enter an Order at all, or that you're going to give me an
7 updated Exhibit A and Proposed Order for each of the remaining
8 Agenda items?

9 MS. STAFFORD: The latter, Your Honor. Precisely as
10 we did this morning with the Uncontested Claim Objections,
11 there's just additional claims that we'd like to adjourn for
12 the time being. And we're happy to submit an additional
13 notice with a revised schedule.

14 THE COURT: Very well then. The objections reflected
15 in Agenda Items IV -- sorry, V.6, V.7, V.8, V.9, V.10 and V.11
16 are sustained, except insofar as claims are adjourned, and the
17 debtor is directed to file proposed orders accurately listing
18 the claims to be disallowed, with no other objections having
19 been interposed to the disallowance of the claims that will be
20 listed.

21 MS. STAFFORD: That sounds great, Your Honor. Thank
22 you so much.

23 THE COURT: I'm glad that sounded like something to
24 you. It sounded circular to me.

25 Thank you, Ms. Stafford.

1 MS. STAFFORD: Thank you.

2 THE COURT: All right. And so that takes us to the
3 end of today's Agenda, unless I've missed anything else? I
4 think I see some merciful relief on people's faces, so I think
5 that is the end of the Agenda.

6 The next scheduled hearing date is the hearing in
7 connection with the PREPA 9019 motion, which is currently
8 scheduled for January 14 and 15, 2020, here in San Juan with a
9 video connection to New York. And I will continue to prepare
10 and anticipate that we're going forward with that unless
11 somebody gives me a good reason not to.

12 I would ask counsel to be mindful that the Court
13 staffing will be leaner during the upcoming holiday season,
14 and so plan appropriately and exercise discretion with filings
15 to avoid time sensitive urgent motion practice or other such
16 requests to the Court being dropped on us late at night, on
17 weekends and on court holidays.

18 And, in fact, it would really be a good idea and
19 courteous to follow that practice after the holidays as well.
20 I have to say, the ten o'clock Friday night urgent motions are
21 getting a little old. And as you'll see, we basically deal
22 with them on Monday, but it would be nice to have those come
23 in in a more normal time frame. So I thank you in advance for
24 any adjustment of your practices that may be necessary.

25 So as always, I thank the court staff here in Puerto

1 Rico, in Boston and New York for their work in connection with
2 these hearings and their superb ongoing support in the
3 administration of these cases.

4 I'm glad that Judge Houser is here so that we've all
5 been able to thank her in person for her extraordinary and
6 ongoing work as leader of the mediation team. Thank you,
7 Counsel, for your advocacy and your work in aid of finding a
8 path forward for Puerto Rico.

9 Keep well, and happy holidays to all. Safe travels.
10 We're adjourned.

11 (At 3:26 PM, proceedings concluded.)

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1 U.S. DISTRICT COURT)
2 DISTRICT OF PUERTO RICO)

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4 I certify that this transcript consisting of 177 pages is
5 a true and accurate transcription to the best of my ability of
6 the proceedings in this case before the Honorable United
7 States District Court Judge Laura Taylor Swain, and the
8 Honorable United States Magistrate Judge Judith Gail Dein on
9 December 11, 2019.

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13 S/ Amy Walker

14 Amy Walker, CSR 3799

15 Official Court Reporter

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